

Calendar No. 45

104TH CONGRESS
1ST SESSION

S. 652

[Report No. 104-23]

To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30 (legislative day, MARCH 27), 1995

Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, reported the following original bill; which was read twice and placed on the calendar

A BILL

To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Telecommunications
3 Competition and Deregulation Act of 1995”.

4 SEC. 2. TABLE OF CONTENTS.

5 The table of contents for this Act is as follows:

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A BILL

To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

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1 SEC. 3. PURPOSE.

2 It is the purpose of this Act to increase competition
3 in all telecommunications markets and provide for an or-
4 derly transition from regulated markets to competitive and
5 deregulated telecommunications markets consistent with
6 the public interest, convenience, and necessity.

7 SEC. 4. GOALS.

8 This Act is intended to establish a national policy
9 framework designed to accelerate rapidly the private sec-
10 tor deployment of advanced telecommunications and infor-
11 mation technologies and services to all Americans by open-
12 ing all telecommunications markets to competition, and to
13 meet the following goals:

1 (1) To promote and encourage advanced tele-
2 communications networks, capable of enabling users
3 to originate and receive affordable, high-quality
4 voice, data, image, graphic, and video telecommuni-
5 cations services.

6 (2) To improve international competitiveness
7 markedly.

8 (3) To spur economic growth, create jobs, and
9 increase productivity.

10 (4) To deliver a better quality of life through
11 the preservation and advancement of universal serv-
12 ice to allow the more efficient delivery of edu-
13 cational, health care, and other social services.

14 **SEC. 5. FINDINGS.**

15 The Congress makes the following findings:

16 (1) Competition, not regulation, is the best way
17 to spur innovation and the development of new serv-
18 ices. A competitive market place is the most efficient
19 way to lower prices and increase value for consum-
20 ers. In furthering the principle of open and full com-
21 petition in all telecommunications markets, however,
22 it must be recognized that some markets are more
23 open than others.

24 (2) Local telephone service is predominantly a
25 monopoly service. Although business customers in

1 metropolitan areas may have alternative providers
2 for exchange access service, consumers do not have
3 a choice of local telephone service. Some States have
4 begun to open local telephone markets to competi-
5 tion. A national policy framework is needed to accel-
6 erate the process.

7 (3) Because of their monopoly status, local tele-
8 phone companies and the Bell operating companies
9 have been prevented from competing in certain mar-
10 kets. It is time to eliminate these restrictions. None-
11 theless, transition rules designed to open monopoly
12 markets to competition must be in place before cer-
13 tain restrictions are lifted.

14 (4) Transition rules must be truly transitional,
15 not protectionism for certain industry segments or
16 artificial impediments to increased competition in all
17 markets. Where possible, transition rules should cre-
18 ate investment incentives through increased competi-
19 tion. Regulatory safeguards should be adopted only
20 where competitive conditions would not prevent anti-
21 competitive behavior.

22 (5) More competitive American telecommuni-
23 cations markets will promote United States techno-
24 logical advances, domestic job and investment oppor-
25 tunities, national competitiveness, sustained eco-

1 nomic development, and improved quality of Amer-
2 ican life more effectively than regulation.

3 (6) Congress should establish clear statutory
4 guidelines, standards, and time frames to facilitate
5 more effective communications competition and, by
6 so doing, will reduce business and customer uncer-
7 tainty, lessen regulatory processes, court appeals,
8 and litigation, and thus encourage the business com-
9 munity to focus more on competing in the domestic
10 and international communications marketplace.

11 (7) Where competitive markets are demon-
12 strably inadequate to safeguard important public
13 policy goals, such as the continued universal avail-
14 ability of telecommunications services at reasonable
15 and affordable prices, particularly in rural America,
16 Congress should establish workable regulatory proce-
17 dures to advance those goals, provided that in any
18 proceeding undertaken to ensure universal availabil-
19 ity, regulators shall seek to choose the most procom-
20 petitive and least burdensome alternative.

21 (8) Competitive communications markets, safe-
22 guarded by effective Federal and State antitrust en-
23 forcement, and strong economic growth in the Unit-
24 ed States which such markets will foster are the
25 most effective means of assuring that all segments

1 of the American public command access to advanced
2 telecommunications technologies.

3 (9) Achieving full and fair competition requires
4 strict parity of marketplace opportunities and re-
5 sponsibilities on the part of incumbent telecommuni-
6 cations service providers as well as new entrants into
7 the telecommunications marketplace, provided that
8 any responsibilities placed on providers should be the
9 minimum required to advance a clearly defined pub-
10 lic policy goal.

11 (10) Congress should not cede its constitutional
12 responsibility regarding interstate and foreign com-
13 merce in communications to the Judiciary through
14 the establishment of procedures which will encourage
15 or necessitate judicial interpretation or intervention
16 into the communications marketplace.

17 (11) Ensuring that all Americans, regardless of
18 where they may work, live, or visit, ultimately have
19 comparable access to the full benefits of competitive
20 communications markets requires Federal and State
21 authorities to work together affirmatively to mini-
22 mize and remove unnecessary institutional and regu-
23 latory barriers to new entry and competition.

24 (12) Effectively competitive communications
25 markets will ensure customers the widest possible

1 choice of services and equipment, tailored to individ-
2 ual desires and needs, and at prices they are willing
3 to pay.

4 (13) Investment in and deployment of existing
5 and future advanced, multipurpose technologies will
6 best be fostered by minimizing government limita-
7 tions on the commercial use of those technologies.

8 (14) The efficient development of competitive
9 United States communications markets will be
10 furthered by policies which aim at ensuring recip-
11 rocal opening of international investment opportuni-
12 ties.

13 **SEC. 6. AMENDMENT OF COMMUNICATIONS ACT OF 1934.**

14 Except as otherwise expressly provided, whenever in
15 this Act an amendment or repeal is expressed in terms
16 of an amendment to, or repeal of, a section or other provi-
17 sion, the reference shall be considered to be made to a
18 section or other provision of the Communications Act of
19 1934 (47 U.S.C. 151 et seq.).

20 **SEC. 7. EFFECT ON OTHER LAW.**

21 (a) **ANTITRUST LAWS.**—Except as provided in sub-
22 sections (b) and (c), nothing in this Act shall be construed
23 to modify, impair, or supersede the applicability of any
24 antitrust law.

1 (b) MODIFICATION OF FINAL JUDGMENT.—This Act
2 shall supersede the Modification of Final Judgment to the
3 extent that it is inconsistent with this Act.

4 (c) TRANSFER OF MFJ AND GTE CONSENT DE-
5 CREES.—After the date of enactment of this Act, the Com-
6 mission shall administer the GTE Consent Decree and any
7 provision of the Modification of Final Judgment not over-
8 ridden or superseded by this Act. The District Court for
9 the District of Columbia shall have no further jurisdiction
10 over any provision of the Modification of Final Judgment,
11 or the GTE Consent Decree, administered by the Commis-
12 sion under this Act.

13 SEC. 8. DEFINITIONS.

14 (a) TERMS USED IN THIS ACT.—As used in this
15 Act—

16 (1) COMMISSION.—The term ‘Commission’
17 means the Federal Communications Commission.

18 (2) MODIFICATION OF FINAL JUDGMENT.—The
19 term ‘Modification of Final Judgment’ means the
20 decree entered on August 24, 1982, in United States
21 v. Western Electric Civil Action No. 82-0192 (Unit-
22 ed States District Court, District of Columbia), and
23 includes any judgment or order with respect to such
24 action entered on or after August 24, 1982, and be-
25 fore the date of enactment of this Act.

1 (3) GTE CONSENT DECREE.—The term “GTE
2 Consent Decree” means the order entered on De-
3 cember 21, 1984, as restated January 11, 1985, in
4 United States v. GTE Corporation, Civil Action No.
5 83-1298 (United States District Court, District of
6 Columbia), and includes any judgment or order with
7 respect to such action entered on or after January
8 11, 1985, and before the date of enactment of this
9 Act.

10 (4) INTEGRATED TELECOMMUNICATIONS SERV-
11 ICE PROVIDER.—The term “integrated telecommuni-
12 cations service provider” means any person engaged
13 in the provision of multiple services, such as voice,
14 data, image, graphics, and video services, which
15 make common use of all or part of the same trans-
16 mission facilities, switches, signalling, or control de-
17 vices.

18 (b) TERMS USED IN THE COMMUNICATIONS ACT OF
19 1934.—Section 3 (47 U.S.C. 153) is amended by adding
20 at the end thereof the following:

21 “(gg) ‘Modification of Final Judgment’ means the de-
22 cree entered on August 24, 1982, in United States v.
23 Western Electric Civil Action No. 82-0192 (United States
24 District Court, District of Columbia), and includes any
25 judgment or order with respect to such action entered on

1 or after August 24, 1982, and before the date of enact-
2 ment of the Telecommunications Competition and Deregu-
3 lation Act of 1995.

4 “(hh) ‘Bell operating company’ means those compa-
5 nies listed in appendix A of the Modification of Final
6 Judgment, and includes any successor or assign of any
7 such company, but does not include any affiliate of such
8 company.

9 “(ii) ‘Affiliate’ means a person that (directly or indi-
10 rectly) owns or controls, is owned or controlled by, or is
11 under common ownership or control with, another person.
12 For purposes of this paragraph, the term ‘own’ means to
13 own an equity interest (or the equivalent thereof) of more
14 than 10 percent.

15 “(jj) ‘Telecommunications Act of 1995’ means the
16 Telecommunications Competition and Deregulation Act of
17 1995.

18 “(kk) ‘Local exchange carrier’ means a provider of
19 telephone exchange service or exchange access service.

20 “(ll) ‘Telecommunications’ means the transmission,
21 between or among points specified by the user, of informa-
22 tion of the user’s choosing, including voice, data, image,
23 graphics, and video, without change in the form or content
24 of the information, as sent and received, with or without
25 benefit of any closed transmission medium.

1 “(mm) ‘Telecommunications service’ means the offer-
2 ing of telecommunications for a fee directly to the public,
3 or to such classes of users as to be effectively available
4 to the public, regardless of the facilities used to transmit
5 the telecommunications service. The term includes the
6 transmission, without change in the form or content, of
7 information services and cable services, but does not in-
8 clude the offering of those services.

9 “(nn) ‘Telecommunications carrier’ means any pro-
10 vider of telecommunications services, except that such
11 term does not include hotels, motels, hospitals, and other
12 aggregators of telecommunications services (as defined in
13 section 226). A telecommunications carrier shall be treat-
14 ed as a common carrier under this Act to the extent that
15 it is engaged in providing telecommunications services.

16 “(oo) ‘Telecommunications number portability’
17 means the ability of users of telecommunications services
18 to retain, at the same location, existing telecommuni-
19 cations numbers without impairment of quality, reliability,
20 or convenience when switching from one telecommuni-
21 cations carrier to another.

22 “(pp) ‘Information service’ means the offering of
23 services that—

24 “(1) employ computer processing applications
25 that act on the format, content, code, protocol, or

1 similar aspects of the subscriber's transmitted infor-
2 mation;

3 "(2) provide the subscriber additional, different,
4 or restructured information; or

5 "(3) involve subscriber interaction with stored
6 information.

7 "(qq) 'Cable service' means cable service as defined
8 in section 602.

9 "(rr) 'Rural telephone company' means a tele-
10 communications carrier operating entity to the extent that
11 such entity provides telephone exchange service, including
12 access service subject to part 69 of the Commission's rules
13 (47 C.F.R. 69.1 et seq.), to—

14 "(1) any service area that does not include ei-
15 ther—

16 "(A) any incorporated place of 10,000 in-
17 habitants or more, or any part thereof, based
18 on the most recent population statistics of the
19 Bureau of the Census; or

20 "(B) any territory, incorporated or unin-
21 corporated, included in an urbanized area, as
22 defined by the Bureau of the Census as of Jan-
23 uary 1, 1995; or

24 "(2) fewer than 100,000 access lines within a
25 State.

1 “(ss) ‘Service area’ means a geographic area estab-
2 lished by the Commission and the States for the purpose
3 of determining universal service obligations and support
4 mechanisms. In the case of an area served by a rural tele-
5 phone company, ‘service area’ means such company’s
6 ‘study area’ unless and until the Commission and the
7 States, after taking into account recommendations of a
8 Federal-State Joint Board instituted under section
9 410(c), establish a different definition of service area for
10 such company.”.

11 **TITLE I—TRANSITION TO COMPETITION**

12 **SEC. 101. INTERCONNECTION REQUIREMENTS.**

13 (a) **REQUIRED INTERCONNECTION.**—Title II (47
14 U.S.C. 201 et seq.) is amended by inserting after section
15 228 the following:

16 **“Part II—Competition in Telecommunications**

17 **“SEC. 251. INTERCONNECTION.**

18 **“(a) DUTY TO PROVIDE INTERCONNECTION.—**

19 **“(1) IN GENERAL.—**A local exchange carrier, or
20 class of local exchange carriers, determined by the
21 Commission to have market power in providing tele-
22 phone exchange service or exchange access service
23 has a duty under this Act, upon request—

24 **“(A) to enter into good faith negotiations**
25 with any telecommunications carrier requesting

1 interconnection between the facilities and equip-
2 ment of the requesting telecommunications car-
3 rier and the carrier, or class of carriers, of
4 which the request was made for the purpose of
5 permitting the telecommunications carrier to
6 provide telephone exchange or exchange access
7 service; and

8 “(B) to provide such interconnection, at
9 rates that are reasonable and nondiscrim-
10 inatory, according to the terms of the agree-
11 ment and in accordance with the requirements
12 of this section.

13 “(2) INITIATION.—A local exchange carrier, or
14 class of carriers, described in paragraph (1) shall
15 commence good faith negotiations to conclude an
16 agreement, whether through negotiation under sub-
17 section (c) or arbitration or intervention under sub-
18 section (d), within 15 days after receiving a request
19 from any telecommunications carrier seeking to pro-
20 vide telephone exchange or exchange access service.
21 Nothing in this Act shall prohibit multilateral nego-
22 tiations between or among a local exchange carrier
23 or class of carriers and a telecommunications carrier
24 or class of carriers seeking interconnection under
25 subsection (c) or subsection (d). At the request of

1 any of the parties to a negotiation, a State may par-
2 ticipate in the negotiation of any portion of an
3 agreement under subsection (c).

4 “(3) MARKET POWER.—For the purpose of de-
5 termining whether a carrier has market power under
6 paragraph (1), the relevant market shall include all
7 providers of telephone exchange or exchange access
8 services in a local area, regardless of the technology
9 used by any such provider.

10 “(b) MINIMUM STANDARDS.—An interconnection
11 agreement entered into under this section shall, if re-
12 quested by a telecommunications carrier requesting inter-
13 connection, provide for—

14 “(1) nondiscriminatory access on an unbundled
15 basis to the network functions and services of the
16 local exchange carrier’s telecommunications network
17 (including switching software);

18 “(2) nondiscriminatory access on an unbundled
19 basis to any of the local exchange carrier’s tele-
20 communications facilities and information, including
21 databases and signaling, necessary to the trans-
22 mission and routing of any telephone exchange serv-
23 ice or exchange access service and the interoper-
24 ability of both carriers’ networks;

1 “(3) interconnection to the local exchange car-
2 rier’s telecommunications facilities and services at
3 any technically feasible point within the carrier’s
4 network;

5 “(4) interconnection that is at least equal in
6 type, quality, and price (on a per unit basis or other-
7 wise) to that provided by the local exchange carrier
8 to itself or to any subsidiary, affiliate, or any other
9 party to which the carrier provides interconnection;

10 “(5) nondiscriminatory access to the poles,
11 ducts, conduits, and rights-of-way owned or con-
12 trolled by the local exchange carrier;

13 “(6) the local exchange carrier to take whatever
14 action under its control is necessary, as soon as is
15 technically feasible, to provide telecommunications
16 number portability and local dialing parity in a man-
17 ner that—

18 “(A) permits consumers to be able to dial
19 the same number of digits when using any tele-
20 communications carrier providing telephone ex-
21 change service or exchange access service in the
22 market served by the local exchange carrier;

23 “(B) permits all such carriers to have non-
24 discriminatory access to telephone numbers, op-
25 erator services, directory assistance, and direc-

1 tory listing with no unreasonable dialing delays;
2 and

3 “(C) provides for a reasonable allocation of
4 costs among the parties to the agreement;

5 “(7) telecommunications services and network
6 functions of the local exchange carrier to be avail-
7 able to the telecommunications carrier on an
8 unbundled basis without any unreasonable condi-
9 tions on the resale or sharing of those services or
10 functions, including the origination, transport, and
11 termination of such telecommunications services,
12 other than reasonable conditions required by a
13 State; and for purposes of this paragraph, it is not
14 an unreasonable condition for a State to limit the re-
15 sale—

16 “(A) of services included in the definition
17 of universal service to a telecommunications
18 carrier who resells that service to a category of
19 customers different from the category of cus-
20 tomers being offered that universal service by
21 such carrier if the State orders a carrier to pro-
22 vide the same service to different categories of
23 customers at different prices necessary to pro-
24 mote universal service; or

1 “(B) of subsidized universal service in a
2 manner that allows companies to charge an-
3 other carrier rates which reflect the actual cost
4 of such services, exclusive of any universal serv-
5 ice support received for providing such services;

6 “(8) reciprocal compensation arrangements for
7 the origination and termination of telecommuni-
8 cations;

9 “(9) reasonable public notice of changes in the
10 information necessary for the transmission and rout-
11 ing of services using that local exchange carrier’s fa-
12 cilities or networks, as well as of any other changes
13 that would affect the interoperability of those facili-
14 ties and networks; and

15 “(10) a schedule of itemized charges and condi-
16 tions for each service, facility, or function provided
17 under the agreement.

18 “(c) AGREEMENTS ARRIVED AT THROUGH NEGOTIA-
19 TION.—Upon receiving a request for interconnection, a
20 local exchange carrier may meet its interconnection obliga-
21 tions under this section by negotiating and entering into
22 a binding agreement with the telecommunications carrier
23 seeking interconnection without regard to the standards
24 set forth in subsection (b). The agreement shall include
25 a schedule of itemized charges for each service, facility,

1 or function included in the agreement. The agreement, in-
2 cluding any interconnection agreement negotiated before
3 the date of enactment of the Telecommunications Act of
4 1995, shall be submitted to the State under subsection
5 (e).

6 “(d) AGREEMENTS ARRIVED AT THROUGH ARBITRA-
7 TION OR INTERVENTION.—

8 “(1) IN GENERAL.—Any party negotiating an
9 interconnection agreement under this section may,
10 at any point in the negotiation, ask a State to par-
11 ticipate in the negotiation and to arbitrate any dif-
12 ferences arising in the course of the negotiation. The
13 refusal of any other party to the negotiation to par-
14 ticipate further in the negotiations, to cooperate with
15 the State in carrying out its function as a arbitrator,
16 or to continue to negotiate in good faith in the pres-
17 ence, or with the assistance, of the State shall be
18 considered a failure to negotiate in good faith.

19 “(2) INTERVENTION.—If any issues remain
20 open in a negotiation commenced under this section
21 more than 135 days after the date upon which the
22 local exchange carrier received the request for such
23 negotiation, then the carrier or any other party to
24 the negotiation may petition a State to intervene in
25 the negotiations for purposes of resolving any such

1 remaining open issues. Any such request must be
2 made during the 25-day period that begins 135 days
3 after the carrier receives the request for such nego-
4 tiation and ends 160 days after that date.

5 “(3) DUTY OF PETITIONER.—

6 “(A) A party that petitions a State under
7 paragraph (2) shall, within 15 days after the
8 State receives the petition, provide the State all
9 relevant documentation concerning the negotia-
10 tions necessary to understand—

11 “(i) the unresolved issues;

12 “(ii) the position of each of the par-
13 ties with respect to those issues; and

14 “(iii) any other issue discussed and
15 resolved by the parties.

16 “(B) A party petitioning a State under
17 paragraph (2) shall notify the other party of its
18 petition not later than the day on which the
19 State receives the petition.

20 “(4) OPPORTUNITY TO RESPOND.—A party to a
21 negotiation under this section with respect to which
22 the other party has petitioned a State under para-
23 graph (2) may respond to the other party’s petition
24 and provide such additional information as it wishes
25 within 25 days after the State receives the petition.

1 “(5) ACTION BY STATE.—

2 “(A) A State proceeding to consider a peti-
3 tion under this subsection shall be conducted in
4 accordance with the rules promulgated by the
5 Commission under subsection (i). The State
6 shall limit its consideration of any petition
7 under paragraph (2) (and any response thereto)
8 to the issues set forth in the petition and in the
9 response, if any, filed under paragraph (4).

10 “(B) The State may require the petitioning
11 party and the responding party to provide such
12 information as may be necessary for the State
13 to reach a decision on the unresolved issues. If
14 either party refuses or fails unreasonably to re-
15 spond on a timely basis to any reasonable re-
16 quest from the State, then the State may pro-
17 ceed on the basis of the best information avail-
18 able to it from whatever source derived.

19 “(C) The State shall resolve each issue set
20 forth in the petition and the response, if any,
21 by imposing appropriate conditions upon the
22 parties to the agreement, and shall conduct the
23 review of the agreement (including the issues
24 resolved by the State) not later than 10 months
25 after the date on which the local exchange car-

1 rier received the request for interconnection
2 under this section.

3 “(D) In resolving any open issues and im-
4 posing conditions upon the parties to the agree-
5 ment, a State shall ensure that the require-
6 ments of this section are met by the solution
7 imposed by the State and are consistent with
8 the Commission’s rules defining minimum
9 standards.

10 “(6) CHARGES.—If the amount charged by a
11 local exchange carrier, or class of local exchange car-
12 riers, for an unbundled element of the interconnec-
13 tion provided under subsection (b) is determined by
14 arbitration or intervention under this subsection,
15 then the charge—

16 “(A) shall be

17 “(i) based on the cost (determined
18 without reference to a rate-of-return or
19 other rate-based proceeding) of providing
20 the unbundled element,

21 “(ii) nondiscriminatory, and

22 “(iii) individually priced to the small-
23 est element that is technically and eco-
24 nomically reasonable to provide; and

25 “(B) may include a reasonable profit.

1 “(e) APPROVAL BY STATE.—Any interconnection
2 agreement under this section shall be submitted for ap-
3 proval to the State. A State to which an agreement is sub-
4 mitted shall approve or reject the agreement, with written
5 findings as to any deficiencies. The State may only re-
6 ject—

7 “(1) an agreement under subsection (c) if it
8 finds that the agreement discriminates against a
9 telecommunications carrier not a party to the agree-
10 ment; and

11 “(2) an agreement under subsection (d) if it
12 finds that—

13 “(B) the agreement does not meet the
14 standards set forth in subsection (b), or

15 “(B) the implementation of the agreement
16 is not in the public interest.

17 If the State does not act to approve or reject the agree-
18 ment within 90 days after receiving the agreement, or 30
19 days in the case of an agreement negotiated under sub-
20 section (c), the agreement shall be deemed approved. No
21 State court shall have jurisdiction to review the action of
22 a State in approving or rejecting an agreement under this
23 section.

24 “(f) FILING REQUIRED.—A State shall make a copy
25 of each agreement approved under subsection (e) available

1 for public inspection and copying within 10 days after the
2 agreement is approved. The State may charge a reason-
3 able and nondiscriminatory fee to the parties to the agree-
4 ment to cover the costs of approving and filing such agree-
5 ment.

6 “(g) AVAILABILITY TO OTHER TELECOMMUNI-
7 CATIONS CARRIERS.—A local exchange carrier shall make
8 available any service, facility, or function provided under
9 an interconnection agreement to which it is a party to any
10 other telecommunications carrier that requests such inter-
11 connection upon the same terms and conditions as those
12 provided in the agreement.

13 “(h) COLLOCATION.—A State may require tele-
14 communications carriers to provide for actual collocation
15 of equipment necessary for interconnection at the premises
16 of the carrier at reasonable charges, if the State finds ac-
17 tual collocation to be in the public interest.

18 “(i) IMPLEMENTATION.—

19 “(1) RULES AND STANDARDS.—The Commis-
20 sion shall promulgate rules to implement the re-
21 quirements of this section within 6 months after the
22 date of enactment of the Telecommunications Act of
23 1995. In establishing the standards for determining
24 what facilities and information are necessary for

1 purposes of subsection (b)(2), the Commission shall
2 consider, at a minimum, whether—

3 “(A) access to such facilities and informa-
4 tion that are proprietary in nature is necessary;
5 and

6 “(B) the failure to provide access to such
7 facilities and information would impair the abil-
8 ity of the telecommunications carrier seeking
9 interconnection to provide the services that it
10 seeks to offer.

11 “(2) COMMISSION TO ACT IF STATE WILL NOT
12 ACT.—If a State, through action or inaction, fails to
13 carry out its responsibility under this section in ac-
14 cordance with the rules prescribed by the Commis-
15 sion under paragraph (1) in any proceeding or other
16 matter under this section, then the Commission shall
17 issue an order preempting the State’s jurisdiction of
18 that proceeding or matter within 90 days after being
19 notified (or taking notice) of such failure, and shall
20 assume the responsibility of the State under this sec-
21 tion with respect to the proceeding or matter and
22 act for the State.

23 “(3) WAIVERS AND MODIFICATIONS FOR
24 RURAL CARRIERS.—The Commission or a State
25 shall, upon petition or on its own initiative, waive or

1 modify the requirements of subsection (b) for a rural
2 telephone company or companies, and may waive or
3 modify the requirements of subsection (b) for local
4 exchange carriers with fewer than 2 percent of the
5 Nation's subscriber lines installed in the aggregate
6 nationwide, to the extent that the Commission or a
7 State determines that such requirements would re-
8 sult in unfair competition, impose a significant ad-
9 verse economic impact on users of telecommuni-
10 cations services, be technically infeasible, or other-
11 wise not be in the public interest. The Commission
12 or a State shall act upon any petition filed under
13 this paragraph within 180 days of receiving such pe-
14 tition. Pending such action, the Commission or a
15 State may suspend enforcement of the requirement
16 or requirements to which the petition applies with
17 respect to the petitioning carrier or carriers.

18 “(j) STATE REQUIREMENTS.—Nothing in this section
19 precludes a State from imposing requirements on a tele-
20 communications carrier for intrastate services that are
21 necessary to further competition in the provision of tele-
22 phone exchange service or exchange access service, as long
23 as the State's requirements are not inconsistent with the
24 Commission's regulations to implement this section.

1 “(k) ACCESS CHARGE RULES.—Nothing in this sec-
2 tion shall affect the Commission’s interexchange-to-local
3 exchange access charge rules for local exchange carriers
4 or interexchange carriers in effect on the date of enact-
5 ment of the Telecommunications Act of 1995.”.

6 (c) TECHNICAL AMENDMENTS.—

7 (1) Title II (47 U.S.C. 201 et seq.) is amended
8 by inserting before section 201 the following:

9 “PART I—GENERAL PROVISIONS”.

10 (2) Section 2(b) (47 U.S.C. 152(b)) is amended
11 by striking “sections 223 through 227, inclusive,
12 and section 332,” and inserting “section 214(d),
13 sections 223 through 227, part II of title II, and
14 section 332,”.

15 **SEC. 102. SEPARATE SUBSIDIARY AND SAFEGUARD RE-**
16 **QUIREMENTS.**

17 (a) IN GENERAL.—Part II of title II (47 U.S.C. 251
18 et seq.), as added by section 101 of this Act, is amended
19 by inserting after section 251 the following new section:

20 **“SEC. 252. SEPARATE SUBSIDIARY; SAFEGUARDS.**

21 **“(a) SEPARATE SUBSIDIARY REQUIRED FOR COM-**
22 **PETITIVE ACTIVITIES.—**

23 “(1) IN GENERAL.—A Bell operating company
24 (including its subsidiaries and affiliates) which pro-
25 vides telephone exchange service may not provide

1 any service described in paragraph (2) unless it pro-
2 vides that service through a subsidiary that—

3 “(A) is separate from any operating com-
4 pany entity that provides telephone exchange
5 service; and

6 “(B) meets the requirements of subsection
7 (b).

8 “(2) SERVICES FOR WHICH A SEPARATE SUB-
9 SIDIARY IS REQUIRED.—The services for which a
10 separate subsidiary is required by paragraph (1) are:

11 “(A) Information services, including cable
12 services and alarm monitoring services, other
13 than any information service a Bell operating
14 company was authorized to provide before July
15 24, 1991.

16 “(B) Manufacturing services.

17 “(C) InterLATA services other than—

18 “(i) incidental services, not including
19 information services;

20 “(ii) out-of-region services; or

21 “(iii) services authorized under an
22 order entered by the United States District
23 Court for the District of Columbia pursu-
24 ant to the Modification of Final Judgment

1 before the date of enactment of the Tele-
2 communications Act of 1995.

3 “(b) STRUCTURAL AND TRANSACTIONAL REQUIRE-
4 MENTS.—The separate subsidiary required by this sec-
5 tion—

6 “(1) shall maintain books, records, and ac-
7 counts in the manner prescribed by the Commission
8 which shall be separate from the books, records, and
9 accounts maintained by the Bell operating company
10 of which it is a subsidiary and any other subsidiary
11 or affiliate of such company;

12 “(2) shall have separate officers, directors, and
13 employees from the Bell operating company of which
14 it is a subsidiary or any other subsidiary or affiliate
15 of such company;

16 “(3) may not obtain credit under any arrange-
17 ment that would permit a creditor, upon default, to
18 have recourse to the assets of the Bell operating
19 company entity that provides telephone exchange
20 service; and

21 “(4) shall conduct all transactions with the Bell
22 operating company of which it is a subsidiary and
23 any other subsidiary or affiliate of such company on
24 an arm’s length basis with any such transactions re-
25 duced to writing and available for public inspection.

1 “(c) NONDISCRIMINATION SAFEGUARDS.—In its deal-
2 ings with its subsidiary described in subsection (a) a Bell
3 operating company, and any other subsidiary or affiliate
4 of such company—

5 “(1) may not discriminate between that com-
6 pany, its subsidiaries or affiliates, and any other en-
7 tity in the provision or procurement of goods, serv-
8 ices, facilities, and information, or in the establish-
9 ment of standards;

10 “(2) may not provide any goods, services, facili-
11 ties, or information to such company, its subsidiaries
12 or affiliates, unless the goods, services, facilities, or
13 information are made available to other persons on
14 reasonable and nondiscriminatory terms and condi-
15 tions; and

16 “(3) shall account for all transactions with a
17 subsidiary described in subsection (a) in accordance
18 with generally accepted accounting principles.

19 “(d) JOINT MARKETING.—

20 “(1) A Bell operating company subsidiary re-
21 quired by this section may not market or sell tele-
22 phone exchange services provided by the Bell operat-
23 ing company unless that company permits other en-
24 tities offering the same or similar service to market
25 and sell its telephone exchange services.

1 “(2) A Bell operating company may not market
2 or sell any service provided by a subsidiary required
3 by this section until that company has been author-
4 ized to provide interLATA services under section
5 255.

6 “(3) The joint marketing and sale of services
7 permitted under this subsection shall not be consid-
8 ered to violate the nondiscrimination provisions of
9 subsection (c).

10 “(e) ADDITIONAL REQUIREMENTS FOR PROVISION
11 OF INTERLATA SERVICES.—A Bell operating company—

12 “(1) shall fulfill any requests from an unaffili-
13 ated entity for exchange access service within a pe-
14 riod no longer than that in which it provides such
15 exchange access service to itself or to its affiliates;

16 “(2) shall fulfill any such requests with ex-
17 change access service of a quality that meets or ex-
18 ceeds the quality of exchange access service provided
19 by the Bell operating company or its affiliates to it-
20 self or its affiliate;

21 “(3) shall provide exchange access service to all
22 carriers at rates that are just, reasonable, not unrea-
23 sonably discriminatory, and based on costs;

24 “(4) shall not provide any facilities, services, or
25 information concerning its provision of exchange ac-

1 cess service to the subsidiary described in subsection
2 (a) unless such facilities, services, or information are
3 made available to other providers of interLATA
4 services in that market on the same terms and con-
5 ditions; and

6 “(5) shall charge the subsidiary described in
7 subsection (a), and impute to itself or any
8 intraLATA interexchange affiliate, the same rates
9 for access to its telephone exchange service and ex-
10 change access service that it charges unaffiliated
11 interexchange carriers for such service.

12 “(f) PROPRIETARY INFORMATION.—

13 “(1) IN GENERAL.—In complying with the re-
14 quirements of this section, each Bell operating com-
15 pany and any subsidiary or affiliate of such company
16 has a duty to protect the confidentiality of propriety
17 information relating to other common carriers, to
18 equipment manufacturers, and to customers. A Bell
19 operating company may not share customer propri-
20 etary information in aggregate form with its subsidi-
21 aries and affiliates unless such aggregate informa-
22 tion is available to other carriers or persons under
23 the same terms and conditions. Individually identifi-
24 able customer proprietary information and other
25 proprietary information may be—

1 “(A) shared only with the consent of the
2 person to which such information relates or
3 from which it was obtained (including other
4 carriers); or

5 “(B) disclosed to appropriate authorities
6 pursuant to court order.

7 “(2) EXCEPTIONS.—Paragraph (1) does not
8 limit the disclosure of individually identifiable cus-
9 tomer proprietary information by each Bell operat-
10 ing company as necessary—

11 “(A) to initiate, render, bill, and collect for
12 telephone exchange service, interexchange serv-
13 ice, or telecommunications service requested by
14 a customer; or

15 “(B) to protect the rights or property of
16 the carrier, or to protect users of any of those
17 services and other carriers from fraudulent,
18 abusive, or unlawful use of, or subscription to,
19 any such service.

20 “(g) COMMISSION MAY GRANT EXCEPTIONS.—The
21 Commission may grant an exception from compliance with
22 any requirement of this section upon a showing that the
23 exception is necessary for the public interest, convenience,
24 and necessity.

25 “(h) APPLICATION TO UTILITY COMPANIES.—

1 “(1) PUBLIC UTILITY HOLDING COMPANIES.—

2 For purposes of this section, a public utility com-
3 pany which is a registered holding company (as de-
4 fined in section 2 of the Public Utility Holding Com-
5 pany Act of 1935 (15 U.S.C. 79b)) that provides
6 telecommunications service shall provide that service
7 through a separate subsidiary. The provisions of
8 subsection (b)(4) and (c)(1) apply to the provision of
9 telecommunications service by such a company
10 through a separate subsidiary as if such company
11 were a Bell operating company.

12 “(2) OTHER UTILITY COMPANIES.—Each State
13 shall determine whether a public utility company
14 subject to its jurisdiction that—

15 “(A) is not a registered holding company
16 (as so defined), and

17 “(B) provides telecommunications service,
18 is required to provide that service through a sepa-
19 rate subsidiary.

20 “(3) SAVINGS PROVISION.—Nothing in this
21 paragraph prohibits a public utility company from
22 engaging in any activity in which it is legally en-
23 gaged on the date of enactment of the Telecommuni-
24 cations Act of 1995.

1 “(i) SEPARATE SUBSIDIARY MAY BE SUBSIDIARY OF
2 HOLDING COMPANY.—For purposes of meeting the re-
3 quirements of this section, and of any other provision of
4 this Act that requires a separate subsidiary that meets the
5 requirements of this section, a company (other than the
6 Bell operating company) that is a subsidiary of the same
7 company of which a Bell operating company is a subsidi-
8 ary shall be considered to meet the separate subsidiary
9 requirement.”.

10 (b) IMPLEMENTATION.—The Commission shall pro-
11 mulgate any regulations necessary to implement section
12 252 of the Communications Act of 1934 (as added by sub-
13 section (a)) within 9 months after the date of enactment
14 of this Act. Any separate subsidiary established or des-
15 ignated for purposes of section 252(a) of the Communica-
16 tions Act of 1934 before the regulations have been issued
17 in final form shall be restructured or otherwise modified,
18 if necessary, to meet the requirements of those regula-
19 tions.

20 (c) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect on the date of enactment
22 of this Act.

23 **SEC. 103. UNIVERSAL SERVICE.**

24 (a) FEDERAL-STATE JOINT BOARD ON UNIVERSAL
25 SERVICE.—

1 (1) Within one month after the date of enact-
2 ment of this Act, the Commission shall institute and
3 refer to a Federal-State Joint Board under section
4 410(c) of the Communications Act of 1934 a pro-
5 ceeding to recommend rules regarding the implemen-
6 tation of section 253 of that Act, including the defi-
7 nition of universal service. The Joint Board shall,
8 after notice and public comment, make its rec-
9 ommendations to the Commission no later than 9
10 months after the date of enactment of this Act.

11 (2) The Commission may periodically, but no
12 less than once every 4 years, institute and refer to
13 the Joint Board a proceeding to review the imple-
14 mentation of section 253 of that Act and to make
15 new recommendations, as necessary, with respect to
16 any modifications or additions that may be needed.
17 As part of any such proceeding the Joint Board
18 shall review the definition of, and adequacy of sup-
19 port for, universal service and shall evaluate the ex-
20 tent to which universal service has been protected
21 and advanced.

22 (b) COMMISSION ACTION.—The Commission shall
23 initiate a single proceeding to implement recommendations
24 from the initial Joint Board required by subsection (a)
25 and shall complete such proceeding within 1 year after the

1 date of enactment of this Act. Thereafter, the Commission
2 shall complete any proceeding to implement recommenda-
3 tions from any further Joint Board required under sub-
4 section (a) within one year after receiving such rec-
5 ommendations.

6 (c) SEPARATIONS RULES.—Nothing in the amend-
7 ments made by this Act to the Communications Act of
8 1934 shall affect the Commission's separations rules for
9 local exchange carriers or interexchange carriers in effect
10 on the date of enactment of this Act.

11 (d) AMENDMENT OF COMMUNICATIONS ACT.—Part
12 II of title II (47 U.S.C. 251 et seq.), as added by this
13 Act, is amended by inserting after section 252 the follow-
14 ing new section:

15 "SEC. 253. UNIVERSAL SERVICE.

16 "(a) UNIVERSAL SERVICE PRINCIPLES.—The Joint
17 Board and the Commission shall base policies for the pres-
18 ervation and advancement of universal service on the fol-
19 lowing principles:

20 "(1) Quality services are to be provided at just,
21 reasonable, and affordable rates.

22 "(2) Access to advanced telecommunications
23 and information services should be provided in all
24 regions of the Nation.

1 “(3) Consumers in rural and high cost areas
2 should have access to telecommunications and infor-
3 mation services, including interexchange services,
4 reasonably comparable to those services provided in
5 urban areas.

6 “(4) Consumers in rural and high cost areas
7 should have access to telecommunications and infor-
8 mation services at rates that are reasonably com-
9 parable to rates charged for similar services in
10 urban areas.

11 “(5) Citizens in rural and high cost areas
12 should have access to the benefits of advanced tele-
13 communications and information services for health
14 care, education, economic development, and other
15 public purposes.

16 “(6) There should be a coordinated Federal-
17 State universal service system to preserve and ad-
18 vance universal service using specific and predictable
19 Federal and State mechanisms administered by
20 independent, non-governmental entities.

21 “(7) Elementary and secondary schools and
22 classrooms should have access to advanced tele-
23 communications services.

24 “(b) DEFINITION.—Universal service is an evolving
25 level of intrastate and interstate telecommunications serv-

1 ices that the Commission, based on recommendations from
2 the public, Congress, and the Federal-State Joint Board
3 periodically convened under section 103 of the Tele-
4 communications Act of 1995, and taking into account ad-
5 vances in telecommunications and information tech-
6 nologies and services, determines should be provided at
7 just, reasonable, and affordable rates to all Americans, in-
8 cluding those in rural and high-cost areas and those with
9 disabilities, to enable them to participate effectively in the
10 economic, academic, medical, and democratic processes of
11 the Nation. At a minimum, universal service shall include
12 any telecommunications services that the Commission de-
13 termines have, through the operation of market choices
14 by customers, been subscribed to by a substantial majority
15 of residential customers.

16 “(c) ALL TELECOMMUNICATIONS PROVIDERS CON-
17 TRIBUTE.—Every telecommunications carrier engaged in
18 intrastate, interstate, or foreign communication shall con-
19 tribute on an equitable and nondiscriminatory basis, in a
20 manner that is reasonably necessary to preserve and ad-
21 vance universal service. Any other provider of tele-
22 communications may be required to contribute to the pres-
23 ervation and advancement of universal service, if the pub-
24 lic interest so requires.

1 “(d) ENFORCEMENT.—In adopting rules to enforce
2 subsection (c), the Commission and the States may impose
3 or require service obligations, financial or other forms of
4 contributions, sharing of equipment and services, dis-
5 counted rates, or other mechanisms.

6 “(e) STATE AUTHORITY.—A State may adopt regula-
7 tions to implement this section, or to provide for additional
8 definitions, mechanisms, and standards to preserve and
9 advance universal service within that State, to the extent
10 that such regulations do not conflict with the Commis-
11 sion’s rules to implement this section.

12 “(f) ELIGIBILITY FOR UNIVERSAL SERVICE SUP-
13 PORT.—If the Commission adopts rules for the distribu-
14 tion of support payments for the preservation and ad-
15 vancement of universal service, only telecommunications
16 carriers which are designated as essential telecommuni-
17 cations carriers under section 214(d) shall be eligible to
18 receive those support payments. The support payments
19 shall accurately reflect the amount reasonably necessary
20 to preserve and advance universal service.

21 “(g) AMOUNT OF UNIVERSAL SERVICE SUPPORT.—
22 The Commission and the States shall base the amount of
23 support payments, if any, on the difference between the
24 actual costs of providing universal service and the reve-
25 nues from providing that service. The Commission and the

1 States shall have as their goal the need to make any uni-
2 versal support explicit and targeted to those carriers that
3 serve areas for which support is necessary. A carrier that
4 receives any such support shall use that support only for
5 the maintenance and upgrading of facilities and services
6 for which the support is intended.

7 “(h) INTEREXCHANGE SERVICE.—The rates charged
8 by providers of interexchange telecommunications service
9 to consumers in rural and high cost areas shall be main-
10 tained at levels no higher than those charged by each such
11 provider to its consumers in urban areas.

12 “(i) SUBSIDY OF COMPETITIVE SERVICES PROHIB-
13 ITED.—Telecommunications carriers may not subsidize
14 competitive services with revenues from services that are
15 not competitive. The Commission, with respect to inter-
16 state services, and the States, with respect to intrastate
17 services, shall establish any necessary cost allocation rules,
18 accounting safeguards, and guidelines to ensure that serv-
19 ices included in universal service bear no more than a rea-
20 sonable share (and may, in the public interest, bear less
21 than a reasonable share or no share) of the joint and com-
22 mon costs of facilities used to provide those services.

23 “(j) EFFECTIVE DATE.—This section takes effect on
24 the date of enactment of the Telecommunications Act of
25 1995, except for subsections (c), (e), (f), and (g), which

1 take effect one year after the date of enactment of that
2 Act.”.

3 **SEC. 104. ESSENTIAL TELECOMMUNICATIONS CARRIERS.**

4 (a) IN GENERAL.—Section 214(d) (47 U.S.C.
5 214(d)) is amended—

6 (1) by inserting “(1) ADEQUATE FACILITIES
7 REQUIRED.—” before “The Commission”; and

8 (2) by adding at the end thereof the following:

9 “(2) DESIGNATION OF ESSENTIAL CARRIER.— If one
10 or more common carriers provide telecommunications
11 service to a geographic area, and no common carrier will
12 provide universal service to an unserved community or any
13 portion thereof that requests such service within such
14 area, then the Commission, with respect to interstate serv-
15 ices, or a State, with respect to intrastate services, shall
16 determine which common carrier serving that area is best
17 able to provide universal service to the requesting unserved
18 community or portion thereof, and shall designate that
19 common carrier as an essential telecommunications carrier
20 for that unserved community or portion thereof.

21 “(3) ESSENTIAL CARRIER OBLIGATIONS.—A common
22 carrier may be designated by the Commission, or by a
23 State, as appropriate, as an essential telecommunications
24 carrier for a specific service area and become eligible to
25 receive any universal support payments the Commission

1 may allow under section 253. A carrier designated as an
2 essential telecommunications carrier shall—

3 “(A) provide through its own facilities or
4 through a combination of its own facilities and re-
5 sale of services using another carrier’s facilities, uni-
6 versal service and any additional service (such as
7 911 service) required by the Commission or the
8 State, to any community or portion thereof which re-
9 quests such service;

10 “(B) offer such services at nondiscriminatory
11 rates established by the Commission, for interstate
12 services, and the State, for intrastate services,
13 throughout the service area; and

14 “(C) advertise throughout the service area the
15 availability of such services and the rates for such
16 services using media of general distribution.

17 “(4) MULTIPLE ESSENTIAL CARRIERS.—If the Com-
18 mission, with respect to interstate services, or a State,
19 with respect to intrastate services, designates more than
20 one common carrier as an essential telecommunications
21 carrier for a specific service area, such carrier shall meet
22 the service, rate, and advertising requirements imposed by
23 the Commission or State on any other essential tele-
24 communications carrier for that service area. A State may
25 require that, before designating an additional essential

1 telecommunications carrier, the State agency authorized
2 to make the designation shall find that—

3 “(A) the designation of an additional essential
4 telecommunications carrier is in the public interest
5 and that there will not be a significant adverse im-
6 pact on users of telecommunications services or on
7 the provision of universal service;

8 “(B) the designation encourages the develop-
9 ment and deployment of advanced telecommuni-
10 cations infrastructure and services in rural areas;
11 and

12 “(C) the designation protects the public safety
13 and welfare, ensures the continued quality of tele-
14 communications services, or safeguards the rights of
15 consumers.

16 “(5) RESALE OF UNIVERSAL SERVICE.—The Com-
17 mission, for interstate services, and the States, for intra-
18 state services, shall establish rules to govern the resale of
19 universal service to allocate any support received for the
20 provision of such service in a manner that ensures that
21 the carrier whose facilities are being resold is adequately
22 compensated for their use, taking into account the impact
23 of the resale on that carrier’s ability to maintain and de-
24 ploy its network as a whole. The Commission shall also
25 establish, based on the recommendations of the Federal-

1 State Joint Board instituted to implement this section,
2 rules to permit a carrier designated as an essential tele-
3 communications carrier to relinquish that designation for
4 a specific service area if another telecommunications car-
5 rier is also designated as an essential telecommunications
6 carrier for that area. The rules—

7 “(A) shall ensure that all customers served by
8 the relinquishing carrier continue to be served, and
9 shall require sufficient notice to permit the purchase
10 or construction of adequate facilities by any remain-
11 ing essential telecommunications carrier if such re-
12 maining carrier provided universal service through
13 resale of the facilities of the relinquishing carrier;
14 and

15 “(B) shall establish criteria for determining
16 when a carrier which intends to utilize resale to
17 meet the requirements for designation under this
18 subsection has adequate resources to purchase, con-
19 struct, or otherwise obtain the facilities necessary to
20 meet its obligation if the reselling carrier is no
21 longer able or obligated to resell the service.

22 “(6) ENFORCEMENT.—A common carrier designated
23 by the Commission or a State as an essential telecommuni-
24 cations carrier that refuses to provide universal service
25 within a reasonable period to an unserved community or

1 portion thereof which requests such service shall forfeit
2 to the United States, in the case of interstate services,
3 or the State, in the case of intrastate services, a fine of
4 up to \$10,000 for each day that such carrier refuses to
5 provide such service. In establishing a reasonable period
6 the Commission or the State, as appropriate, shall con-
7 sider the nature of any construction required to serve such
8 requesting unserved community or portion thereof, as well
9 as the construction intervals normally attending such con-
10 struction, and shall allow adequate time for regulatory ap-
11 provals and acquisition of necessary financing.

12 “(7) INTEREXCHANGE SERVICES.—The Commission,
13 for interstate services, or a State, for intrastate services,
14 shall designate an essential telecommunications carrier for
15 interexchange services for any unserved community or por-
16 tion thereof requesting such services. Any common carrier
17 designated as an essential telecommunications carrier for
18 interexchange services under this paragraph shall provide
19 interexchange services included in universal service to any
20 unserved community or portion thereof which requests
21 such service. The service shall be provided at nationwide
22 geographically averaged rates for interstate interexchange
23 services and at geographically averaged rates for intra-
24 state interexchange services, and shall be just and reason-
25 able and not unjustly or unreasonably discriminatory. A

1 common carrier designated as an essential telecommuni-
2 cations carrier for interexchange services under this para-
3 graph that refuses to provide interexchange service in ac-
4 cordance with this paragraph to an unserved community
5 or portion thereof that requests such service within 180
6 days of such request shall forfeit to the United States a
7 fine of \$50,000 for each day that such carrier refuses to
8 provide such service. The Commission or the State, as ap-
9 propriate, may extend the 180-day period for providing
10 interexchange service upon a showing by the common car-
11 rier of good faith efforts to comply within such period.

12 “(8) IMPLEMENTATION.—The Commission may, by
13 regulation, establish guidelines by which States may im-
14 plement the provisions of this section.”.

15 (b) CONFORMING AMENDMENT.—The heading for
16 section 214 is amended by inserting a semicolon and “es-
17 sential telecommunications carriers” after “lines”.

18 **SEC. 105. FOREIGN INVESTMENT AND OWNERSHIP RE-**
19 **FORM.**

20 (a) IN GENERAL.—Section 310 (47 U.S.C. 310) is
21 amended by adding at the end thereof the following new
22 subsection:

23 “(f) TERMINATION OF FOREIGN OWNERSHIP RE-
24 STRICTIONS.—

1 “(1) RESTRICTION NOT TO APPLY WHERE RECI-
2 PROCITY FOUND.—Subsection (b) shall not apply to
3 any common carrier license held, or for which appli-
4 cation is made, after the date of enactment of the
5 Telecommunications Act of 1995 with respect to any
6 alien (or representative thereof), corporation, or for-
7 eign government (or representative thereof) if the
8 Commission determines that the foreign country of
9 which such alien is a citizen, in which such corpora-
10 tion is organized, or in which such foreign govern-
11 ment is in control provides equivalent market oppor-
12 tunities for common carriers to citizens of the Unit-
13 ed States (or their representatives), corporations or-
14 ganized in the United States, and the United States
15 Government (or its representative). The determina-
16 tion of whether market opportunities are equivalent
17 shall be made on a market segment specific basis.

18 “(2) SNAPBACK FOR RECIPROCITY FAILURE.—
19 If the Commission determines that any foreign coun-
20 try with respect to which it has made a determina-
21 tion under paragraph (1) ceases to meet the require-
22 ments for that determination, then—

23 “(A) subsection (b) shall apply with re-
24 spect to such aliens, corporations, and govern-
25 ment (or their representatives) on the date on

1 which the Commission publishes notice of its
2 determination under this paragraph, and

3 “(B) any license held, or application filed,
4 which could not be held or granted under sub-
5 section (b) shall be withdrawn, or denied, as the
6 case may be, by the Commission under the pro-
7 visions of subsection (b).”.

8 (b) CONFORMING AMENDMENT.—Section 332(c)(6)
9 (47 U.S.C. 332(c)(6)) is amended by adding at the end
10 thereof the following:

11 “This paragraph does not apply to any foreign own-
12 ership interest or transfer of ownership to which sec-
13 tion 310(b) does not apply because of section
14 310(f).”.

15 **SEC. 106. INFRASTRUCTURE SHARING.**

16 (a) REGULATIONS REQUIRED.—The Commission
17 shall prescribe, within one year after the date of enact-
18 ment of this Act, regulations that require local exchange
19 carriers that were subject to Part 69 of the Commission’s
20 rules on or before that date to make available to any quali-
21 fying carrier such public switched network infrastructure,
22 technology, information, and telecommunications facilities
23 and functions as may be requested by such qualifying car-
24 rier for the purpose of enabling such qualifying carrier to
25 provide telecommunications services, or to provide access

1 to information services, in the service area in which such
2 qualifying carrier has requested and obtained designation
3 as an essential telecommunications carrier under section
4 214(d).

5 (b) TERMS AND CONDITIONS OF REGULATIONS.—

6 The regulations prescribed by the Commission pursuant
7 to this section shall—

8 (1) not require a local exchange carrier to
9 which this section applies to take any action that is
10 economically unreasonable or that is contrary to the
11 public interest;

12 (2) permit, but shall not require, the joint own-
13 ership or operation of public switched network infra-
14 structure and services by or among such local ex-
15 change carrier and a qualifying carrier;

16 (3) ensure that such local exchange carrier will
17 not be treated by the Commission or any State as
18 a common carrier for hire or as offering common
19 carrier services with respect to any infrastructure,
20 technology, information, facilities, or functions made
21 available to a qualifying carrier in accordance with
22 regulations issued pursuant to this section;

23 (4) ensure that such local exchange carrier
24 makes such infrastructure, technology, information,
25 facilities, or functions available to a qualifying car-

1 rier on just and reasonable terms and conditions
2 that permit such qualifying carrier to fully benefit
3 from the economies of scale and scope of such local
4 exchange carrier, as determined in accordance with
5 guidelines prescribed by the Commission in regula-
6 tions issued pursuant to this section;

7 (5) establish conditions that promote coopera-
8 tion between local exchange carriers to which this
9 section applies and qualifying carriers;

10 (6) not require a local exchange carrier to
11 which this section applies to engage in any infra-
12 structure sharing agreement for any services or ac-
13 cess which are to be provided or offered to consum-
14 ers by the qualifying carrier in such local exchange
15 carrier's telephone exchange area; and

16 "(7) require that such local exchange carrier
17 file with the Commission or State for public inspec-
18 tion, any tariffs, contracts, or other arrangements
19 showing the rates, terms, and conditions under
20 which such carrier is making available public
21 switched network infrastructure and functions under
22 this section.

23 (c) INFORMATION CONCERNING DEPLOYMENT OF
24 NEW SERVICES AND EQUIPMENT.—A local exchange car-
25 rier to which this section applies that has entered into an

1 infrastructure sharing agreement under this section shall
2 provide to each party to such agreement timely informa-
3 tion on the planned deployment of telecommunications
4 services and equipment, including any software or up-
5 grades of software integral to the use or operation of such
6 telecommunications equipment.

7 (d) DEFINITIONS.—For purposes of this section—

8 (1) QUALIFYING CARRIER.—The term “qualify-
9 ing carrier” means a telecommunications carrier
10 that—

11 (A) lacks economies of scale or scope, as
12 determined in accordance with regulations pre-
13 scribed by the Commission pursuant to this sec-
14 tion; and

15 (B) is a common carrier which offers tele-
16 phone exchange service, exchange access serv-
17 ice, and any other service that is included in
18 universal service, to all consumers without pref-
19 erence throughout the service area for which
20 such carrier has been designated as an essential
21 telecommunications carrier under section
22 214(d) of the Communications Act of 1934.

23 (2) OTHER TERMS.—Any term used in this sec-
24 tion that is defined in the Communications Act of
25 1934 has the same meaning as it has in that Act.

1 **TITLE II—REMOVAL OF RESTRICTIONS TO**
2 **COMPETITION**

3 Subtitle A—Removal of Restrictions

4 SEC. 201. REMOVAL OF ENTRY BARRIERS.

(a) PREEMPTION OF STATE RULES.—Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 253 the following:

8 "SEC. 254. REMOVAL OF BARRIERS TO ENTRY.

9 “(a) IN GENERAL.—No State or local statute or reg-
10 ulation, or other State or local legal requirement, may pro-
11 hibit or have the effect of prohibiting the ability of any
12 entity to provide any interstate or intrastate telecommuni-
13 cations services.

14 “(b) STATE REGULATORY AUTHORITY.—Nothing in
15 this section shall affect the ability of a State to impose,
16 on a competitively neutral basis and consistent with sec-
17 tion 253, requirements necessary to preserve and advance
18 universal service, protect the public safety and welfare, en-
19 sure the continued quality of telecommunications services,
20 and safeguard the rights of consumers.

21 “(c) LOCAL GOVERNMENT AUTHORITY.—Nothing in
22 this section affects the authority of a local government to
23 manage the public rights-of-way or to require fair and rea-
24 sonable compensation from telecommunications providers,
25 on a competitively neutral and nondiscriminatory basis,

1 for use of public rights-of-way on a nondiscriminatory
2 basis, if the compensation required is publicly disclosed by
3 such government.

4 “(d) PREEMPTION.—If, after notice and an oppor-
5 tunity for public comment, the Commission determines
6 that a State or local government has permitted or imposed
7 any statute, regulation, or legal requirement that violates
8 or is inconsistent with this section, the Commission shall
9 immediately preempt the enforcement of such statute, reg-
10 ulation, or legal requirement to the extent necessary to
11 correct such violation or inconsistency.

12 “(e) COMMERCIAL MOBILE SERVICES PROVIDERS.—
13 Nothing in this section shall affect the application of sec-
14 tion 332(c)(3) to commercial mobile services providers.”.

15 (b) PROVISION OF TELECOMMUNICATIONS SERVICES
16 BY A CABLE OPERATOR.—

17 (1) JURISDICTION OF FRANCHISING AUTHOR-
18 ITY.—Section 621(b) (47 U.S.C. 541(b)) is amended
19 by adding at the end thereof the following new para-
20 graph:

21 “(3)(A) To the extent that a cable operator or
22 affiliate thereof is engaged in the provision of tele-
23 communications services—

1 “(i) such cable operator or affiliate shall
2 not be required to obtain a franchise under this
3 title; and

4 “(ii) the provisions of this title shall not
5 apply to such cable operator or affiliate.

6 “(B) A franchising authority may not order a
7 cable operator or affiliate thereof to discontinue the
8 provision of a telecommunications service.

9 “(C) A franchising authority may not require a
10 cable operator to provide any telecommunications
11 service or facilities as a condition of the initial grant
12 of a franchise, franchise renewal, or transfer of a
13 franchise.

14 “(D) Nothing in this paragraph affects existing
15 Federal or State authority with respect to tele-
16 communications services.”.

17 (2) FRANCHISE FEES.—Section 622(b) (47
18 U.S.C. 542(b)) is amended by inserting “to provide
19 cable services” immediately before the period at the
20 end of the first sentence.

21 (c) STATE AND LOCAL TAX LAWS.—Except as pro-
22 vided in section 202, nothing in this Act (or in the Com-
23 munications Act of 1934 as amended by this Act) shall
24 be construed to modify, impair, or supersede, or authorize
25 the modification, impairment, or supersession of, any

1 State or local law pertaining to taxation that is consistent
2 with the requirements of the Constitution of the United
3 States, this Act, the Communications Act of 1934, or any
4 other applicable Federal law.

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section take effect on the date of enactment of this
7 Act.

8 **SEC. 202. LIMITATION ON STATE AND LOCAL TAXATION OF**
9 **DIRECT-TO-HOME SATELLITE SERVICES.**

10 (a) AUTHORITY TO IMPOSE TAXES AND FEES ON DI-
11 RECT-TO-HOME SATELLITE SERVICES.—

12 (1) IN GENERAL.—A State may require a di-
13 rect-to-home satellite service provider who is subject
14 to the personal jurisdiction of the State to collect
15 and remit a State sales tax, a local sales tax, or
16 both, with respect to direct-to-home satellite services,
17 if—

18 (A) the destination of such services is in
19 the State, and

20 (B) in a State in which both State and
21 local sales taxes are imposed, the State, in ac-
22 cordance with the requirements of this sec-
23 tion—

24 (i) requires the collection and remit-
25 tance of any applicable local sales taxes

1 with respect to direct-to-home satellite
2 services, and

3 (ii) collects and administers the local
4 sales taxes with respect to direct-to-home
5 satellite services, except in those local tax-
6 ing jurisdictions described in paragraph
7 (2)(A).

8 (2) LOCAL TAXING JURISDICTION.—

9 (A) A State that exercises authority under
10 this section may require a direct-to-home sat-
11 ellite service provider to collect and remit local
12 sales taxes to the local taxing jurisdiction if—

13 (i) as of the effective date of this sec-
14 tion, the local taxing jurisdiction imposes
15 and administers a local sales tax separate
16 from the sales tax imposed by the State, or

17 (ii) after the effective date of this sec-
18 tion, a local jurisdiction that does not im-
19 pose any local sales taxes as of the effec-
20 tive date of this section is authorized to
21 impose a local sales tax.

22 (B) If, after the effective date of this sec-
23 tion, a local jurisdiction is authorized to admin-
24 ister a local sales tax that the State is admin-
25 istering as of that date, the State shall continue

1 to collect and remit the local sales tax author-
2 ized under this section in accordance with para-
3 graph (1)(B)(ii).

4 (3) DISTRIBUTION OF LOCAL SALES TAXES.—A
5 State shall distribute the local sales tax collected
6 under the authority granted by this section to local
7 jurisdictions in accordance with the requirements of
8 State law governing the distribution of local sales
9 taxes.

10 (b) STATE AND LOCAL LAW; NONDISCRIMINATION.—

11 (1) STATE AND LOCAL LAW.—A State may re-
12 quire a direct-to-home satellite service provider to
13 collect and remit State and local sales taxes with re-
14 spect to direct-to-home satellite services only where
15 the applicable law of the State or local taxing juris-
16 diction imposes a sales tax.

17 (2) NONDISCRIMINATION.—Except as otherwise
18 provided in this section, a State that exercises au-
19 thority under this section shall allow to direct-to-
20 home satellite service providers exemptions or other
21 exceptions to State and local sales taxes that the
22 State or local taxing jurisdiction allows under simi-
23 lar circumstances to persons located within the State
24 or local taxing jurisdiction.

25 (c) EXEMPTION.—

1 (1) EXEMPTION OF OTHER LOCAL TAX OR FEE
2 FOR SERVICES.—A direct-to-home satellite service
3 provider and its representatives for the sale or dis-
4 tribution of direct-to-home satellite services shall be
5 exempt from collecting and remitting any other local
6 tax or fee (as defined by subsection (d)(9)) imposed
7 on direct-to-home satellite services in any local tax-
8 ing jurisdiction in which, during the 1-year period
9 ending on September 30 of the calendar year preced-
10 ing the calendar year in which the provision of di-
11 rect-to-home satellite services occurs, the direct-to-
12 home satellite service provider does not own or hold
13 any interest in property or maintain an office, and
14 limits its business activities to no more than—

15 (A) providing direct-to-home satellite serv-
16 ices to subscribers in the local taxing jurisdic-
17 tion, and the billing for and collection of the
18 fees for such services occur outside the local
19 taxing jurisdiction; and

20 (B) soliciting and placing orders for the
21 sale of direct-to-home satellite services through
22 contractual arrangements with, and on the
23 premises of, retail outlets and establishments,
24 which orders are filled and billed for from a
25 point outside the local taxing jurisdiction, re-

1 gardless of where the subscriber makes an ini-
2 tial payment for an initial subscription.

3 (2) NO OTHER EFFECT.—Except as provided
4 herein, this section does not affect the authority of
5 any State or local taxing jurisdiction of any State
6 otherwise to adopt, apply, and administer any tax or
7 method of taxation.

8 (d) DEFINITIONS.—For purposes of this section—

9 (1) COMPENSATING USE TAX.—The term “com-
10 pensating use tax” means a tax imposed on or inci-
11 dent to the use or consumption of direct-to-home
12 satellite services within a State or a local jurisdiction
13 or other area of a State.

14 (2) DESTINATION.—The term “destination”
15 means the State or local jurisdiction to which the di-
16 rect-to-home satellite service is delivered for viewing
17 or other activity to which the service is directed.

18 (3) DIRECT-TO-HOME SATELLITE SERVICE PRO-
19 VIDER.—The term “direct-to-home satellite service
20 provider” means a person who provides direct-to-
21 home satellite services.

22 (4) DIRECT-TO-HOME SATELLITE SERVICES.—
23 The term “direct-to-home satellite services” means
24 the distribution or broadcasting of programming or
25 services by satellite directly to the subscriber’s prem-

1 ises without the use of ground receiving or distribu-
2 tion equipment, except at the subscriber's premises,
3 or used in the initial uplink process to the direct-to-
4 home satellite.

5 (5) LOCAL TAXING JURISDICTION.—The term
6 “local taxing jurisdiction” means any municipality,
7 city, county, township, parish, transportation dis-
8 trict, or assessment jurisdiction, or any other politi-
9 cal subdivision with the authority to impose a tax or
10 fee.

11 (6) LOCAL SALES TAX.—The term “local sales
12 tax” means a sales or compensating use tax imposed
13 by a local taxing jurisdiction, whether administered
14 by the State or the local taxing jurisdiction.

15 (7) SALES TAX.—The term “sales tax” means
16 a tax, including a compensating use tax, that is—

17 (A) imposed on or incident to the sale,
18 purchase, consumption, distribution, or other
19 use of direct-to-home satellite services as may
20 be defined or specified under the law imposing
21 such tax, and

22 (B) measured by the amount of the sales
23 price, cost, charge, or gross receipts, or other
24 value of or for the services.

1 (8) STATE.—Notwithstanding any provision to
2 the contrary in this section, the term “State” means
3 any of the several States of the United States, the
4 District of Columbia, the Commonwealth of Puerto
5 Rico, and any territory or possession of the United
6 States.

7 (9) OTHER LOCAL TAX OR FEE.—The term
8 “other local tax or fee” means any local tax or fee
9 that is not a sales tax, as defined in paragraph (6)
10 or (7), including such locally imposed taxes and fees
11 as an intangible tax, income tax, business license
12 tax, utility tax, privilege tax, gross receipts tax, ex-
13 cise tax, franchise fees, telecommunications tax, or
14 other tax, license, or fee.

15 (e) EFFECTIVE DATE.—This section shall take effect
16 on the date of enactment of this Act.

17 **SEC. 203. ELIMINATION OF CABLE AND TELEPHONE COM-**
18 **PANY CROSS-OWNERSHIP RESTRICTION.**

19 (a) IN GENERAL.—Section 613(b) (47 U.S.C.
20 533(b)) is amended to read as follows:

21 “(b) VIDEO PROGRAMMING AND CABLE SERVICES.—

22 “(1) DISTINCTION BETWEEN VIDEO PLATFORM
23 AND CABLE SERVICE.—To the extent that any tele-
24 communications carrier carries video programming
25 provided by others, or provides video programming

1 directly to subscribers, through a common carrier
2 video platform, neither the telecommunications car-
3 rier nor any video programming provider making use
4 of such platform shall be deemed to be a cable oper-
5 ator providing cable service. To the extent that any
6 telecommunications carrier provides video program-
7 ming directly to subscribers through a cable system,
8 the carrier shall be deemed to be a cable operator
9 providing cable service.

10 “(2) BELL OPERATING COMPANY ACTIVITIES.—

11 “(A) Notwithstanding the provisions of
12 section 252, to the extent that a Bell operating
13 company carries or provides video programming
14 over a common carrier video platform, it need
15 not use a separate subsidiary if—

16 “(i) the carrier provides facilities,
17 services, or information to all programmers
18 on the same terms and conditions as it
19 provides such facilities, services, or infor-
20 mation to its own video programming oper-
21 ations, and

22 “(ii) the carrier does not subsidize its
23 provision of video programming with reve-
24 nues from its telecommunications services.

1 “(B) To the extent that a Bell operating
2 company provides cable service as a cable oper-
3 ator, it shall provide such service through a
4 subsidiary that meets the requirements of sec-
5 tion 252, and shall meet the requirements of
6 clauses (i) and (ii) of subparagraph (A).

7 “(C) Upon a finding by the Commission
8 that the requirement of a separate subsidiary
9 under the preceding subparagraph is no longer
10 necessary to protect consumers, competition, or
11 the public interest, the Commission shall ex-
12 empt a Bell operating company from that re-
13 quirement.

14 “(3) COMMON CARRIER VIDEO PLATFORM.—
15 Nothing in this Act precludes a telecommunications
16 carrier from carrying video programming provided
17 by others directly to subscribers over a common car-
18 rier video platform.

19 “(4) RATES; ACCESS.—Notwithstanding para-
20 graph (2)(A)(i), a provider of common carrier video
21 platform services shall provide local broadcast sta-
22 tions, and to those public, educational, and govern-
23 mental entities required by local franchise authori-
24 ties to be given access to cable systems operating in
25 the same market as the video platform, with access

1 to the video platform for the transmission of tele-
2 vision broadcast programming at rates no higher
3 than the incremental-cost-based rates of providing
4 such access. Local broadcast stations shall be enti-
5 tled to obtain access on the first tier of program-
6 ming on the video platform.

7 “(5) COMPETITIVE NEUTRALITY.—A provider
8 of video programming may be required to pay fees
9 in lieu of franchise fees (as defined in section
10 622(g)(1)) if the fees—

11 “(A) are competitively neutral; and

12 “(B) are separately identified in consumer
13 billing.”.

14 (b) NO PERMIT REQUIRED FOR VIDEO PROGRAM-
15 MING SERVICES.—Section 214 (47 U.S.C. 214) is amend-
16 ed by adding at the end thereof the following:

17 “(e) SPECIAL RULE.—No certificate is required
18 under this section for a carrier to construct facilities to
19 provide video programming services.”.

20 (c) SAFEGUARDS.—Within one year after the date of
21 enactment of this Act, the Commission shall prescribe reg-
22 ulations that—

23 (1) require a telecommunications carrier that
24 provides video programming directly to subscribers
25 to ensure that subscribers are offered the means to

1 obtain access to the signals of broadcast television
2 stations as readily as they are today;

3 (2) require such a carrier to display clearly and
4 prominently at the beginning of any program guide
5 or menu of program offerings the identity of any
6 signal of any television broadcast station that is car-
7 ried by the carrier;

8 (3) require such a carrier to ensure that viewers
9 are able to access the signal of any television broad-
10 cast station that is carried by that carrier without
11 first having to view advertising or promotional mate-
12 rial, or a navigational device, guide, or menu that
13 omits broadcasting services as an available option;

14 (4) except as required by paragraphs (1)
15 through (3), prohibit such carrier and a multi-
16 channel video programming distributor using the fa-
17 cilities of such carrier from discriminating among
18 video programming providers with respect to mate-
19 rial or information provided by the carrier to sub-
20 scribers for the purposes of selecting programming,
21 or in the way such material or information is pre-
22 sented to subscribers;

23 (5) require such carrier and a multichannel
24 video programming distributor using the facilities of
25 such carrier to ensure that video programming pro-

1 viders or copyright holders (or both) are able suit-
2 ably and uniquely to identify their programming
3 services to subscribers;

4 (6) if such identification is transmitted as part
5 of the programming signal, require a telecommuni-
6 cations carrier that provides video programming di-
7 rectly to subscribers and a multichannel video pro-
8 gramming distributor using the facilities of such car-
9 rier to transmit such identification without change
10 or alteration;

11 (7) consistent with the other provisions of title
12 VI of the Communications Act of 1934 (47 U.S.C.
13 521 et seq.) prohibit such carrier from discriminat-
14 ing among video programming providers with regard
15 to carriage and ensure that the rates, terms, and
16 conditions for such carriage are just, reasonable, and
17 nondiscriminatory;

18 (8) extend to such carriers and multichannel
19 video programming distributors using the facilities
20 of such carrier the Commission's regulations con-
21 cerning network nonduplication (47 C.F.R. 76.92 et
22 seq.) and syndicated exclusivity (47 C.F.R. 76.171
23 et seq.); and

24 (9) extend to such carriers and multichannel
25 video programming distributors using the facilities

1 of such carrier the protections afforded to local
2 broadcast signals in section 614(b)(3), 614(b)(4)(A),
3 and 615(g)(1) and (2) of such Act (47 U.S.C.
4 534(b)(3), 534(b)(4)(A), and 535(g)(1) and (2)).

5 (d) ENFORCEMENT.—The Commission shall resolve
6 disputes under subsection (c) and the regulations pre-
7 scribed under that subsection. Any such dispute shall be
8 resolved with 180 days after notice of the dispute is sub-
9 mitted to the Commission. At that time, or subsequently
10 in a separate proceeding, the Commission may award
11 damages sustained in consequence of any violation of this
12 section to any person denied carriage, or require carriage,
13 or both. Any aggrieved party may also seek any other rem-
14 edy available under the law.

15 (e) EFFECTIVE DATES.—The amendment made by
16 subsection (a) takes effect on the date of enactment of
17 this Act. The amendment made by subsection (b) takes
18 effect 1 year after that date.

19 SEC. 204. CABLE ACT REFORM.

20 (a) RATE DEREGULATION.—

21 (1) Section 623(c) (47 U.S.C. 543(c)) is
22 amended—

23 (A) by striking “subscriber,” and the
24 comma after “authority” in paragraph (1)(B);

1 (B) by striking paragraph (2) and insert-
2 ing the following:

3 “(2) STANDARD FOR UNREASONABLE RATES.—

4 The Commission may only consider a rate for cable
5 programming services to be unreasonable if it sub-
6 stantially exceeds the national average rate for com-
7 parable cable programming services.”.

8 (2) Section 623(l)(1) (47 U.S.C. 543(l)(1)) is
9 amended—

10 (A) by striking “or” at the end of subpara-
11 graph (B);

12 (B) by striking the period at the end of
13 subparagraph (C) and inserting a semicolon
14 and “or”; and

15 (C) by adding at the end the following:

16 “(D) a local exchange carrier offers video
17 programming services directly to subscribers, ei-
18 ther over a common carrier video platform or as
19 a cable operator, in the franchise area of an un-
20 affiliated cable operator which is providing
21 cable service in that franchise area.”.

22 (b) DISCRIMINATORY PROGRAMMING RATES.—Sec-
23 tion 628(c)(2)(B)(iii) (47 U.S.C. 548(c)(2)(B)(iii)) is
24 amended by striking “scale, cost savings, or other direct

1 and legitimate economic benefits” and inserting “scale or
2 cost savings”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section take effect on the date of enactment of this
5 Act.

6 **SEC. 205. POLE ATTACHMENTS.**

7 (a) IN GENERAL.—Section 224 (47 U.S.C. 224) is
8 amended—

9 (1) by inserting after “utility” in subsection
10 (a)(4) a comma and the following: “which attach-
11 ment may be used by that cable television system to
12 provide cable service or any other telecommuni-
13 cations service”; and

14 (2) by redesignating subsections (b), (c), and
15 (d) as (c), (d), and (e), respectively, and inserting
16 the following after subsection (a):

17 “(b)(1) A utility shall provide a cable television sys-
18 tem with nondiscriminatory access to any pole, duct, con-
19 duit, or right-of-way owned or controlled by it.

20 “(2) For purposes of paragraph (1), the Commission
21 shall, not later than 1 year after the date of enactment
22 of the Telecommunications Act of 1995, prescribe regula-
23 tions for ensuring that utilities charge just, reasonable,
24 and nondiscriminatory rates for pole attachments provided
25 to all telecommunications carriers and cable operators, in-

1 cluding such attachments used by cable television systems
2 to provide telecommunications services. The regulations—

3 “(A) shall recognize that the entire pole, duct,
4 conduit, or right-of-way other than the usable space
5 is of equal benefit to all attachments of entities that
6 hold an ownership interest in the pole, duct, conduit,
7 or right-of-way and therefore apportion the cost of
8 the space other than the usable space equally among
9 all such attachments; and

10 “(B) shall recognize that an entity that obtains
11 an attachment through a license or other similar ar-
12 rangement benefits from the entire pole, duct, con-
13 duit, or right-of-way other than the usable space in
14 the same proportion as it benefits from the usable
15 space and therefore apportion to such entity a por-
16 tion of the cost of the space other than the usable
17 space in the same manner as the cost of usable
18 space is apportioned to such entity.”.

19 (b) CONFORMING AMENDMENTS.—Section 224 (47
20 U.S.C. 224), as amended by subsection (a), is amended—

21 (1) by striking “subsection (c)” in subsection
22 (c), as redesignated by subsection (a)(3), and insert-
23 ing “subsection (d)”; and

1 (2) by striking "subsection (b)" in subsection
2 (e), as so redesignated, and inserting "subsection
3 (c)".

4 **SEC. 206. ENTRY BY UTILITY COMPANIES.**

5 **(a) IN GENERAL.—**

6 **(1) AUTHORIZED ACTIVITIES OF UTILITIES.—**

7 Notwithstanding any other provision of law to the
8 contrary (including the Public Utility Holding Com-
9 pany Act of 1935 (15 U.S.C. 79a et seq.)), an elec-
10 tric, gas, water, or steam utility, and any subsidiary
11 company, affiliate, or associate company of such a
12 utility, other than a public utility holding company
13 that is an associate company of a registered holding
14 company, may engage, directly or indirectly, in any
15 activity whatsoever, wherever located, necessary or
16 appropriate to the provision of—

17 (A) telecommunications services,

18 (B) information services,

19 (C) other services or products subject to
20 the jurisdiction of the Federal Communications
21 Commission under the Communications Act of
22 1934 (47 U.S.C. 151 et seq.), or

23 (D) products or services that are related or
24 incidental to a product or service described in
25 subparagraph (A), (B), or (C).

1 (2) SEC JURISDICTION LIMITED.—The Securi-
2 ties and Exchange Commission has no jurisdiction
3 under the Public Utility Holding Company Act of
4 1935 (15 U.S.C. 79a et seq.) over a holding com-
5 pany, or a subsidiary company, affiliate, or associate
6 company of a holding company, engaged in any ac-
7 tivity described in paragraph (1) to enforce any re-
8 quirement with respect to that Act, or approve or
9 otherwise review any such activity, including financ-
10 ing, investing in, acquiring, or maintaining any in-
11 terest in, or entering into affiliate transactions or
12 contracts.

13 (b) PROHIBITION OF CROSS-SUBSIDIZATION.—Noth-
14 ing in this section precludes the Federal Energy Regu-
15 latory Commission or a State commission from exercising
16 its jurisdiction to the extent otherwise authorized under
17 applicable law with respect to prohibiting cross-subsidiza-
18 tion of any activity described in subsection (a)(1) by a
19 public-utility company which is an associate company of
20 a registered holding company.

21 (c) SEPARATE BOOKS REQUIRED.—Any subsidiary
22 company, affiliate, or associate company that is an associ-
23 ate company of a registered holding company engaged in
24 any activity described in subsection (a)(1)—

1 (1) shall maintain separate books, records, and
2 accounts that identify all transactions involving such
3 activity; and

4 (2) shall provide access to those books, records,
5 and accounts to State commissions and the Federal
6 Energy Regulatory Commission.

7 (d) INDEPENDENT AUDIT AUTHORITY FOR STATE
8 COMMISSIONS.—

9 (1) STATE MAY REQUEST AUDIT.—Any State
10 commission with jurisdiction over a public-utility
11 company that—

12 (A) is an associate company of a registered
13 holding company, and

14 (B) transacts business with a subsidiary
15 company, affiliate, or associate company of that
16 holding company engaged in any activity de-
17 scribed in subsection (a)(1),

18 may request that it have an independent audit per-
19 formed, no more frequently than on an annual basis,
20 of transactions between the public-utility company
21 and the subsidiary company, affiliate, or associate
22 company engaged in that activity.

23 (2) COMPLIANCE BY COMPANY REQUIRED.—If a
24 State commission makes such a request, the com-
25 pany engaged in the activity shall select an inde-

1 pendent auditor and bear the costs of having the
2 audit performed.

3 (3) AVAILABILITY OF AUDITOR'S REPORT.—The
4 auditor's report shall be provided to the State com-
5 mission within 6 months after the request for the
6 audit was made by the State commission.

7 (e) DEFINITIONS.—Any term used in this section
8 that is defined in the Public Utility Holding Company Act
9 of 1935 (15 U.S.C. 79a et seq.) has the same meaning
10 as it has in that Act.

11 (f) EFFECTIVE DATE.—This section takes effect on
12 the date of enactment of this Act.

13 **SEC. 207. BROADCAST REFORM.**

14 (a) SPECTRUM REFORM.—

15 (1) ADVANCED TELEVISION SPECTRUM SERV-
16 ICES.—If the Commission by rule permits licensees
17 to provide advanced television services, then—

18 (A) it shall adopt regulations that allow
19 such licensees to make use of the advanced tele-
20 vision spectrum for the transmission of ancil-
21 lary or supplementary services if the licensees
22 provide without charge to the public at least
23 one advanced television program service as pre-
24 scribed by the Commission that is intended for

1 and available to the general public on the ad-
2 vanced television spectrum; and

3 (B) it shall apply similar rules to use of
4 existing television spectrum.

5 (2) COMMISSION TO COLLECT FEES.—To the
6 extent that a television broadcast licensee provides
7 ancillary or supplementary services using existing or
8 advanced television spectrum—

9 (A) for which payment of a subscription
10 fee is required in order to receive such services,
11 or

12 (B) for which the licensee directly or indi-
13 rectly receives compensation from a third party
14 in return for transmitting material furnished by
15 such third party, other than payments to broad-
16 cast stations by third parties for transmission
17 of program material or commercial advertising,
18 the Commission may collect from each such licensee
19 an annual fee to the extent the existing or advanced
20 television spectrum is used for such ancillary or sup-
21 plementary services. In determining the amount of
22 such fees, the Commission shall take into account
23 the portion of the licensee's total existing or ad-
24 vanced television spectrum which is used for such
25 services and the amount of time such services are

1 provided. The amount of such fees to be collected for
2 any such service shall not, in any event, exceed an
3 amount equivalent on an annualized basis to the
4 amount paid by providers of a competing service on
5 spectrum subject to auction under section 309(j) of
6 the Communications Act of 1934 (47 U.S.C. 309(j)).

7 (3) PUBLIC INTEREST REQUIREMENT.—Noth-
8 ing in this section shall be construed as relieving a
9 television broadcasting station from its obligation to
10 serve the public interest, convenience, and necessity.
11 In the Commission's review of any application for
12 renewal of a broadcast license for a television station
13 that provides ancillary or supplementary services,
14 the television licensee shall establish that its pro-
15 gram service which is intended for and available to
16 the general public on the existing or advanced tele-
17 vision spectrum is in the public interest. Any viola-
18 tion of the Commission rules applicable to ancillary
19 or supplementary services may reflect upon the li-
20 censee's qualifications for renewal of its license.

21 (4) DEFINITIONS.—As used in this sub-
22 section—

23 (A) The term "advanced television serv-
24 ices" means television services provided using

1 digital or other advanced technology to enhance
2 audio quality and video resolution.

3 (B) The term "existing" means spectrum
4 generally in use for television broadcast pur-
5 poses on the date of enactment of this Act.

6 (b) OWNERSHIP REFORM.—

7 (1) IN GENERAL.—The Commission shall mod-
8 ify its rules for multiple ownership set forth in 47
9 CFR 73.3555 by changing the percentage set forth
10 in subdivision (e)(2)(ii) from 25 percent to 35 per-
11 cent.

12 (2) STATUTORY RESTRICTIONS.—Section 613
13 (47 U.S.C. 533) is amended by striking subsection
14 (a) and inserting the following:

15 "(a) The Commission shall review its ownership rules
16 biennially as part of its regulatory reform review under
17 section 259."

18 (3) CONFORMING CHANGES.—The Commission
19 shall amend its rules to make any changes necessary
20 to reflect the effect of this section on its rules.

21 (4) EFFECTIVE DATE.—The Commission shall
22 make the modification required by paragraph (1) ef-
23 fective on the date of enactment of this Act.

1 (c) TERM OF LICENSES.—Section 307(c) (47 U.S.C.
2 307(c)) is amended by striking the first four sentences and
3 inserting the following:

4 “No license shall be granted for a term longer than
5 10 years. Upon application, a renewal of such license may
6 be granted from time to time for a term of not to exceed
7 10 years, if the Commission finds that the public interest,
8 convenience, and necessity would be served thereby.”.

9 (d) BROADCAST LICENSE RENEWAL PROCEDURES.—

10 (1) Section 309 (47 U.S.C. 309) is amended by
11 adding at the end thereof the following:

12 “(k)(1)(A) Notwithstanding subsections (c) and (d),
13 if the licensee of a broadcast station submits an applica-
14 tion to the Commission for renewal of such license, the
15 Commission shall grant the application if it finds, after
16 notice and opportunity for comment (and a hearing on the
17 record if it finds that there are credible allegations of seri-
18 ous violations by the licensee of this Act or the Commis-
19 sion’s rules or regulations), with respect to that station
20 during the preceding term of its license, that—

21 “(i) the station has served the public interest,
22 convenience, and necessity;

23 “(ii) there have been no serious violations by
24 the licensee of this Act or the rules and regulations
25 of the Commission; and

1 “(iii) there have been no other violations by the
2 licensee of this Act or the rules and regulations of
3 the Commission which, taken together, would con-
4 stitute a pattern of abuse.

5 “(B) If any licensee of a broadcast station fails to
6 meet the requirements of this subsection, the Commission
7 may deny the application for renewal in accordance with
8 paragraph (2), or grant such application on appropriate
9 terms and conditions, including renewal for a term less
10 than the maximum otherwise permitted.

11 “(2) If the Commission determines that a licensee
12 has failed to meet the requirements specified in paragraph
13 (1)(A) and that no mitigating factors justify the imposi-
14 tion of lesser sanctions, the Commission shall—

15 “(A) issue an order denying the renewal appli-
16 cation filed by such licensee under section 308; and

17 “(B) only thereafter accept and consider such
18 applications for a construction permit as may be
19 filed under section 308 specifying the channel or
20 broadcasting facilities of the former licensee.

21 “(3) In making the determinations specified in para-
22 graphs (1) or (2)(A), the Commission shall not consider
23 whether the public interest, convenience, and necessity
24 might be served by the grant of a license to a person other
25 than the renewal applicant.”.

1 (2) Section 309(d) (47 U.S.C. 309(d)) is
2 amended by inserting “(or subsection (k) in the case
3 of renewal of any broadcast station license)” after
4 “with subsection (a)” each place it appears.

5 Subtitle B—Termination of Modification of Final
6 Judgment

7 SEC. 221. REMOVAL OF LONG DISTANCE RESTRICTIONS.

8 (a) IN GENERAL.—Part II of title II (47 U.S.C. 251
9 et seq.), as added by this Act, is amended by inserting
10 after section 254 the following new section:

11 "SEC. 255. INTEREXCHANGE TELECOMMUNICATIONS SERV.
12 ICES.

13 “(a) IN GENERAL.—Notwithstanding any restriction
14 or obligation imposed before the date of enactment of the
15 Telecommunications Act of 1995 under section II(D) of
16 the Modification of Final Judgment, a Bell operating com-
17 pany, or any subsidiary or affiliate of a Bell operating
18 company, that meets the requirements of this section may
19 provide—

20 “(1) interLATA telecommunications services
21 originating in any region in which it is the dominant
22 provider of wireline telephone exchange service or ex-
23 change access service after the Commission deter-
24 mines that it has fully implemented the competitive
25 checklist found in subsection (b)(2) in the area in

1 which it seeks to provide interLATA telecommuni-
2 cations services, in accordance with the provisions of
3 subsection (c);

4 “(2) interLATA telecommunications services
5 originating in any area where that company is not
6 the dominant provider of wireline telephone ex-
7 change service or exchange access service in accord-
8 ance with the provisions of subsection (d); and

9 “(3) interLATA services that are incidental
10 services in accordance with the provisions of sub-
11 section (e).

12 “(b) SPECIFIC INTERLATA INTERCONNECTION RE-
13 QUIREMENTS.—

14 “(1) IN GENERAL.—A Bell operating company
15 may provide interLATA services in accordance with
16 this section only if that company has reached an
17 interconnection agreement under section 251 and
18 that agreement provides, at a minimum, for inter-
19 connection that meets the competitive checklist re-
20 quirements of paragraph (2).

21 “(2) COMPETITIVE CHECKLIST.—Interconnec-
22 tion provided by a Bell operating company to other
23 telecommunications carriers under section 251 shall
24 include:

1 “(A) Nondiscriminatory access on an
2 unbundled basis to the network functions and
3 services of the Bell operating company’s tele-
4 communications network that is at least equal
5 in type, quality, and price to the access the Bell
6 operating company affords to itself or any other
7 entity.

8 “(B) The capability to exchange tele-
9 communications between customers of the Bell
10 operating company and the telecommunications
11 carrier seeking interconnection.

12 “(C) Nondiscriminatory access to the
13 poles, ducts, conduits, and rights-of-way owned
14 or controlled by the Bell operating company
15 where it has the legal authority to permit such
16 access.

17 “(D) Local loop transmission from the
18 central office to the customer’s premises,
19 unbundled from local switching or other serv-
20 ices.

21 “(E) Local transport from the trunk side
22 of a wireline local exchange carrier switch
23 unbundled from switching or other services.

1 “(F) Local switching unbundled from
2 transport, local loop transmission, or other serv-
3 ices.

4 “(G) Nondiscriminatory access to—

5 “(i) 911 and E911 services;

6 “(ii) directory assistance services to
7 allow the other carrier’s customers to ob-
8 tain telephone numbers; and

9 “(iii) operator call completion services.

10 “(H) White pages directory listings for
11 customers of the other carrier’s telephone ex-
12 change service.

13 “(I) Until the date by which neutral tele-
14 phone number administration guidelines, plan,
15 or rules are established, nondiscriminatory ac-
16 cess to telephone numbers for assignment to the
17 other carrier’s telephone exchange service cus-
18 tomers. After that date, compliance with such
19 guidelines, plan, or rules.

20 “(J) Nondiscriminatory access to
21 databases and associated signaling, including
22 signaling links, signaling service control points,
23 and signaling service transfer points, necessary
24 for call routing and completion.

1 “(K) Until the date by which the Commis-
2 sion determines that final telecommunications
3 number portability is technically feasible and
4 must be made available, interim telecommuni-
5 cations number portability through remote call
6 forwarding, direct inward dialing trunks, or
7 other comparable arrangements, with as little
8 impairment of functioning, quality, reliability,
9 and convenience as possible. After that date,
10 full compliance with final telecommunications
11 number portability.

12 “(L) Nondiscriminatory access to whatever
13 services or information may be necessary to
14 allow the requesting carrier to implement local
15 dialing parity in a manner that permits con-
16 sumers to be able to dial the same number of
17 digits when using any telecommunications car-
18 rier providing telephone exchange service or ex-
19 change access service.

20 “(M) Reciprocal compensation arrange-
21 ments on a nondiscriminatory basis for the
22 origination and termination of telecommuni-
23 cations.

24 “(N) Telecommunications services and net-
25 work functions provided on an unbundled basis

1 without any conditions or restrictions on the re-
2 sale or sharing of those services or functions,
3 including both origination and termination of
4 telecommunications services, other than reason-
5 able conditions required by the Commission or
6 a State. For purposes of this subparagraph, it
7 is not an unreasonable condition for the Com-
8 mission or a State to limit the resale—

9 “(i) of services included in the defini-
10 tion of universal service to a telecommuni-
11 cations carrier who intends to resell that
12 service to a category of customers different
13 from the category of customers being of-
14 fered that universal service by such carrier
15 if the Commission or State orders a carrier
16 to provide the same service to different
17 categories of customers at different prices
18 necessary to promote universal service; or

19 “(ii) of subsidized universal service in
20 a manner that allows companies to charge
21 another carrier rates which reflect the ac-
22 tual cost of such services, exclusive of any
23 universal service support received for pro-
24 viding such services.

1 “(3) JOINT MARKETING OF LOCAL AND LONG
2 DISTANCE SERVICES.—Until a Bell operating com-
3 pany is authorized to provide interLATA services in
4 a telephone exchange area, a telecommunications
5 carrier may not jointly market telephone exchange
6 service or exchange access service purchased from
7 such company with interexchange services offered by
8 that telecommunications carrier.

9 “(4) COMMISSION MAY NOT EXPAND COMPETI-
10 TIVE CHECKLIST.—The Commission may not, by
11 rule or otherwise, limit or extend the terms used in
12 the competitive checklist.

13 “(c) IN-REGION SERVICES.—

14 “(1) APPLICATION.—Upon the enactment of
15 the Telecommunications Act of 1995, a Bell operat-
16 ing company or its subsidiary or affiliate may apply
17 to the Commission for authorization notwithstanding
18 the Modification of Final Judgment to provide
19 interLATA telecommunications service originating in
20 any area where such Bell operating company is the
21 dominant provider of wireline telephone exchange
22 service or exchange access service. The application
23 shall describe with particularity the nature and
24 scope of the activity and of each product market or

1 service market, and each geographic market for
2 which authorization is sought.

3 “(2) DETERMINATION BY COMMISSION.—

4 “(A) DETERMINATION.—Not later than 90
5 days after receiving an application under para-
6 graph (1), the Commission shall issue a written
7 determination, on the record after a hearing
8 and opportunity for comment, granting or deny-
9 ing the application in whole or in part. Before
10 making any determination under this subpara-
11 graph, the Commission shall consult with the
12 Attorney General regarding the application. In
13 consulting with the Commission under this sub-
14 paragraph, the Attorney General may apply any
15 appropriate standard.

16 “(B) APPROVAL.—The Commission may
17 only approve the authorization requested in an
18 application submitted under paragraph (1) if it
19 finds that—

20 “(i) the petitioning Bell operating
21 company has fully implemented the com-
22 petitive checklist found in subsection
23 (b)(2); and

1 “(ii) the requested authority will be
2 carried out in accordance with the require-
3 ments of section 252,
4 and if the Commission determines that the re-
5 quested authorization is consistent with the
6 public interest, convenience, and necessity. If
7 the Commission does not approve an application
8 under this subparagraph, it shall state the basis
9 for its denial of the application.

10 “(3) PUBLICATION.—Not later than 10 days
11 after issuing a determination under paragraph (2),
12 the Commission shall publish in the Federal Register
13 a brief description of the determination.

14 “(4) JUDICIAL REVIEW.—

15 “(A) COMMENCEMENT OF ACTION.—Not
16 later than 45 days after a determination by the
17 Commission is published under paragraph (3),
18 the Bell operating company or its subsidiary or
19 affiliate that applied to the Commission under
20 paragraph (1), or any person who would be
21 threatened with loss or damage as a result of
22 the determination regarding such company’s en-
23 gaging in the activity described in its applica-
24 tion, may commence an action in any United
25 States Court of Appeals against the Commis-

1 sion for judicial review of the determination re-
2 garding the application.

3 “(B) JUDGMENT.—

4 “(i) The Court shall enter a judgment
5 after reviewing the determination in ac-
6 cordance with section 706 of title 5 of the
7 United State Code.

8 “(ii) A judgment—

9 “(I) affirming any part of the de-
10 termination that approves granting all
11 or part of the requested authorization,
12 or

13 “(II) reversing any part of the
14 determination that denies all or part
15 of the requested authorization,
16 shall describe with particularity the nature
17 and scope of the activity, and of each prod-
18 uct market or service market, and each ge-
19 ographic market, to which the affirmance
20 or reversal applies.

21 “(5) REQUIREMENTS RELATING TO SEPARATE
22 SUBSIDIARY; SAFEGUARDS; AND INTRALATA TOLL
23 DIALING PARITY.—

24 “(A) SEPARATE SUBSIDIARY; SAFE-
25 GUARDS.—Other than interLATA services au-

1 thorized by an order entered by the United
2 States District Court for the District of Colum-
3 bia pursuant to the Modification of Final Judg-
4 ment before the date of enactment of the Tele-
5 communications Act of 1995, a Bell operating
6 company, or any subsidiary or affiliate of such
7 a company, providing interLATA services au-
8 thorized under this subsection may provide such
9 interLATA services in that market only in ac-
10 cordance with the requirements of section 252.

11 “(B) INTRALATA TOLL DIALING PAR-
12 ITY.—

13 “(i) A Bell operating company grant-
14 ed authority to provide interLATA services
15 under this subsection shall provide
16 intraLATA toll dialing parity throughout
17 that market coincident with its exercise of
18 that authority. If the Commission finds
19 that such a Bell operating company has
20 provided interLATA service authorized
21 under this clause before its implementation
22 of intraLATA toll dialing parity through-
23 out that market, or fails to maintain
24 intraLATA toll dialing parity throughout
25 that market, the Commission, except in

1 cases of inadvertent interruptions or other
2 events beyond the control of the Bell oper-
3 ating company, shall suspend the authority
4 to provide interLATA service for that mar-
5 ket until the Commission determines that
6 intraLATA toll dialing parity is imple-
7 mented or reinstated.

8 “(ii) A State may not order the imple-
9 mentation of toll dialing parity in an
10 intraLATA area before a Bell operating
11 company has been granted authority under
12 this subsection to provide interLATA serv-
13 ices in that area.

14 “(d) OUT-OF-REGION SERVICES.—A Bell operating
15 company or its subsidiary or affiliate may provide
16 interLATA telecommunications services originating in any
17 area where such company is not the dominant provider
18 of wireline telephone exchange service or exchange access
19 service upon the date of enactment of the Telecommuni-
20 cations Act of 1995.

21 “(e) INCIDENTAL SERVICES.—

22 “(1) IN GENERAL.—A Bell operating company
23 may provide interLATA services that are incidental
24 to the purposes of—

1 “(A)(i) providing audio programming,
2 video programming, or other programming serv-
3 ices to subscribers of such company,

4 “(ii) providing the capability for inter-
5 action by such subscribers to select or respond
6 to such audio programming, video program-
7 ming, or other programming services, to order,
8 or control transmission of the programming,
9 polling or balloting, and ordering other goods or
10 services, or

11 “(iii) providing to distributors audio pro-
12 gramming or video programming that such
13 company owns, controls, or is licensed by the
14 copyright owner of such programming, or by an
15 assignee of such owner, to distribute,

16 “(B) providing a telecommunications serv-
17 ice, using the transmission facilities of a cable
18 system that is an affiliate of such company, be-
19 tween LATAs within a cable system franchise
20 area in which such company is not, on the date
21 of enactment of the Telecommunications Act of
22 1995, a provider of wireline telephone exchange
23 service,

24 “(C) providing a commercial mobile service
25 except where such service is a replacement for

1 land line telephone exchange service for a sub-
2 stantial portion of the land line telephone ex-
3 change service in a State in accordance with
4 section 332(c) of this Act and with the regula-
5 tions prescribed by the Commission,

6 “(D) providing a service that permits a
7 customer that is located in one LATA to re-
8 trieve stored information from, or file informa-
9 tion for storage in, information storage facilities
10 of such company that are located in another
11 LATA area, so long as the customer acts af-
12 firmatively to initiate the storage or retrieval of
13 information, except that—

14 “(i) such service shall not cover any
15 service that establishes a direct connection
16 between end users or any real-time voice
17 and data transmission,

18 “(ii) such service shall not include
19 voice, data, or facsimile distribution serv-
20 ices in which the Bell operating company
21 or affiliate forwards customer-supplied in-
22 formation to customer- or carrier-selected
23 recipients;

24 “(iii) such service shall not include
25 any service in which the Bell operating

1 company or affiliate searches for and con-
2 nects with the intended recipient of infor-
3 mation, or any service in which the Bell
4 operating company or affiliate automati-
5 cally forwards stored voicemail or other in-
6 formation to the intended recipient; and

7 “(iv) customers of such service shall
8 not be billed a separate charge for the
9 interLATA telecommunications furnished
10 in conjunction with the provision of such
11 service;

12 “(E) providing signaling information used
13 in connection with the provision of telephone ex-
14 change service or exchange access service to an-
15 other local exchange carrier; or

16 “(F) providing network control signaling
17 information to, and receiving such signaling in-
18 formation from, interexchange carriers at any
19 location within the area in which such company
20 provides telephone exchange service or exchange
21 access service.

22 “(2) LIMITATIONS.—The provisions of para-
23 graph (1) are intended to be narrowly construed.
24 The transmission facilities used by a Bell operating
25 company or affiliate thereof to provide interLATA

1 telecommunications under subparagraphs (C) and
2 (D) of paragraph (1) shall be leased by that com-
3 pany from unaffiliated entities on terms and condi-
4 tions (including price) no more favorable than those
5 available to the competitors of that company until
6 that Bell operating company receives authority to
7 provide interLATA services under subsection (c).
8 The interLATA services provided under paragraph
9 (1)(A) are limited to those interLATA transmissions
10 incidental to the provision by a Bell operating com-
11 pany or its affiliate of video, audio, and other pro-
12 gramming services that the company or its affiliate
13 is engaged in providing to the public. A Bell operat-
14 ing company may not provide telecommunications
15 services not described in paragraph (1) without re-
16 ceiving the approvals required by subsection (c). The
17 provision of services authorized under this sub-
18 section by a Bell operating company or its affiliate
19 shall not adversely affect telephone exchange rate-
20 payers or competition in any telecommunications
21 market.

22 “(f) DEFINITIONS.—As used in this section—

23 “(1) LATA.—The term ‘LATA’ means a local
24 access and transport area as defined in United
25 States v. Western Electric Co., 569 F. Supp. 990

1 (United States District Court, District of Columbia)
2 and subsequent judicial orders relating thereto.

3 “(2) AUDIO PROGRAMMING SERVICES.—The
4 term ‘audio programming services’ means program-
5 ming provided by, or generally considered to be com-
6 parable to programming provided by, a radio broad-
7 cast station.

8 “(3) VIDEO PROGRAMMING SERVICES; OTHER
9 PROGRAMMING SERVICES.—The terms ‘video pro-
10 gramming service’ and ‘other programming services’
11 have the same meanings as such terms have under
12 section 602 of this Act.”.

13 (b) LONG DISTANCE ACCESS FOR COMMERCIAL MO-
14 BILE SERVICES.—Notwithstanding any restriction or obli-
15 gation imposed pursuant to the Modification of Final
16 Judgment prior to the date of enactment of this Act, a
17 person engaged in the provision of commercial mobile serv-
18 ices, insofar as such person is so engaged, shall not be
19 required to provide equal access to interexchange tele-
20 communications carriers unless required to do so under
21 the Communications Act of 1934. In connection with the
22 provision of two-way switched voice service, such a person
23 shall not block a subscriber from obtaining access to the
24 provider of interexchange services of the subscriber’s

1 choice through the use of the access code assigned by the
2 Commission to each such provider.

3 **SEC. 222. REMOVAL OF MANUFACTURING RESTRICTIONS.**

4 (a) IN GENERAL.—Part II of title II (47 U.S.C. 251
5 et seq.), as added by this Act, is amended by inserting
6 after section 255 the following new section:

7 **“SEC. 256. REGULATION OF MANUFACTURING BY BELL OP-**
8 **ERATING COMPANIES.**

9 **“(a) AUTHORIZATION.—**

10 **“(1) IN GENERAL.—**Notwithstanding any re-
11 striction or obligation imposed before the date of en-
12 actment of the Telecommunications Act of 1995
13 pursuant to the Modification of Final Judgment on
14 the lines of business in which a Bell operating com-
15 pany may engage, if the Commission authorizes a
16 Bell operating company to provide interLATA serv-
17 ices under section 255, then that company may be
18 authorized by the Commission to manufacture and
19 provide telecommunications equipment, and to man-
20 ufacture customer premises equipment, at any time
21 after that determination is made, subject to the re-
22 quirements of this section and the regulations pre-
23 scribed thereunder.

24 **“(2) CERTAIN RESEARCH AND DESIGN AR-**
25 **RANGEMENTS; ROYALTY AGREEMENTS.—**Upon the

1 enactment of the Telecommunications Act of 1995,
2 a Bell operating company may—

3 “(A) engage in research and design activi-
4 ties related to manufacturing, and

5 “(B) enter into royalty agreements with
6 manufacturers of telecommunications equip-
7 ment.

8 “(b) SEPARATE SUBSIDIARY; SAFEGUARDS.—Any
9 manufacturing or provision of equipment authorized under
10 subsection (a) shall be conducted in accordance with the
11 requirements of section 252.

12 “(c) PROTECTION OF SMALL TELEPHONE COMPANY
13 INTERESTS.—

14 “(1) EQUIPMENT TO BE MADE AVAILABLE TO
15 OTHERS.—A manufacturing subsidiary of a Bell op-
16 erating company shall make available, without dis-
17 crimination or self-preference as to price, delivery,
18 terms, or conditions, to all local exchange carriers,
19 for use with the public telecommunications network,
20 any telecommunications equipment, including soft-
21 ware integral to such telecommunications equipment,
22 including upgrades, manufactured by such subsidi-
23 ary if each such purchasing carrier—

1 “(A) does not manufacture telecommuni-
2 cations equipment or have a subsidiary which
3 manufactures telecommunications equipment; or

4 “(B) agrees to make available, to the Bell
5 operating company that is the parent of the
6 manufacturing subsidiary or any of the local ex-
7 change carrier affiliates of such Bell company,
8 any telecommunications equipment, including
9 software integral to such telecommunications
10 equipment, including upgrades, manufactured
11 for use with the public telecommunications net-
12 work by such purchasing carrier or by any en-
13 tity or organization with which such purchasing
14 carrier is affiliated.

15 “(2) SALES TO OTHER LOCAL EXCHANGE CAR-
16 RIERS.—

17 “(A) A Bell operating company and any
18 entity acting on its behalf shall make procure-
19 ment decisions and award all supply contracts
20 for equipment, services, and software on the
21 basis of open, competitive bidding, and an ob-
22 jective assessment of price, quality, delivery,
23 and other commercial factors.

24 “(B) A Bell operating company and any
25 entity it owns or otherwise controls shall permit

1 any person to participate fully on a non-dis-
2 criminatory basis in the process of establishing
3 standards and certifying equipment used in or
4 interconnected to the public telecommunications
5 network.

6 “(C) A manufacturing subsidiary of a Bell
7 operating company may not restrict sales to any
8 local exchange carrier of telecommunications
9 equipment, including software integral to the
10 operation of such equipment and related up-
11 grades.

12 “(D) A Bell operating company and any
13 entity it owns or otherwise controls shall protect
14 the proprietary information submitted with con-
15 tract bids and in the standards and certification
16 processes from release not specifically author-
17 ized by the owner of such information.

18 “(d) COLLABORATION WITH OTHER MANUFACTUR-
19 ERS.—A Bell operating company and its subsidiaries or
20 affiliates may engage in close collaboration with any man-
21 ufacturer of customer premises equipment or tele-
22 communications equipment not affiliated with a Bell oper-
23 ating company during the design and development of
24 hardware, software, or combinations thereof relating to
25 such equipment.

1 “(e) ADDITIONAL RULES AND REGULATIONS.—The
2 Commission may prescribe such additional rules and regu-
3 lations as the Commission determines are necessary to
4 carry out the provisions of this section.

5 “(f) ADMINISTRATION AND ENFORCEMENT.—

6 “(1) COMMISSION AUTHORITY.—For the pur-
7 poses of administering and enforcing the provisions
8 of this section and the regulations prescribed under
9 this section, the Commission shall have the same au-
10 thority, power, and functions with respect to any
11 Bell operating company as the Commission has in
12 administering and enforcing the provisions of this
13 title with respect to any common carrier subject to
14 this Act.

15 “(2) CIVIL ACTIONS BY INJURED CARRIERS.—
16 Any local exchange carrier injured by an act or
17 omission of a Bell operating company or its manu-
18 facturing subsidiary or affiliate which violates the
19 requirements of paragraph (1) or (2) of subsection
20 (c), or the Commission’s regulations implementing
21 such paragraphs, may initiate an action in a district
22 court of the United States to recover the full amount
23 of damages sustained in consequence of any such
24 violation and obtain such orders from the court as
25 are necessary to terminate existing violations and to

1 prevent future violations; or such local exchange car-
2 rier may seek relief from the Commission pursuant
3 to sections 206 through 209.

4 “(g) APPLICATION TO BELL COMMUNICATIONS RE-
5 SEARCH.—Nothing in this section—

6 “(1) provides any authority for Bell Commu-
7 nications Research, or any successor entity, to man-
8 ufacture or provide telecommunications equipment
9 or to manufacture customer premises equipment; or

10 “(2) prohibits Bell Communications Research,
11 or any successor entity, from engaging in any activ-
12 ity in which it is lawfully engaged on the date of en-
13 actment of the Telecommunications Act of 1995, in-
14 cluding providing a centralized organization for the
15 provision of engineering, administrative, and other
16 services (including serving as a single point of con-
17 tact for coordination of the Bell operating companies
18 to meet national security and emergency prepared-
19 ness requirements).

20 “(h) DEFINITIONS.—As used in this section—

21 “(1) The term ‘customer premises equipment’
22 means equipment employed on the premises of a
23 person (other than a carrier) to originate, route, or
24 terminate telecommunications.

1 “(2) The term ‘manufacturing’ has the same
2 meaning as such term has in the Modification of
3 Final Judgment.

4 “(3) The term ‘telecommunications equipment’
5 means equipment, other than customer premises
6 equipment, used by a carrier to provide tele-
7 communications services.”.

8 (b) EFFECT ON PRE-EXISTING MANUFACTURING AU-
9 THORITY.—Nothing in this section, or in section 256 of
10 the Communications Act of 1934 as added by this section,
11 prohibits any Bell operating company from engaging, di-
12 rectly or through any subsidiary or affiliate, in any manu-
13 facturing activity in which any Bell operating company,
14 subsidiary, or affiliate was authorized to engage on the
15 date of enactment of this Act.

16 SEC. 223. EXISTING ACTIVITIES.

17 Nothing in this Act, or any amendment made by this
18 Act, prohibits a Bell operating company from engaging,
19 at any time after the date of enactment of this Act, in
20 any activity authorized by an order entered by the United
21 States District Court for the District of Columbia pursu-
22 ant to section VII or VIII(C) of the Modification of Final
23 Judgment, if such order was entered on or before the date
24 of enactment of this Act.

1 SEC. 224. ENFORCEMENT.

2 (a) IN GENERAL.—Part II of title II (47 U.S.C. 251
3 et seq.), as added by this Act, is amended by inserting
4 after section 256 the following:

5 “SEC. 257. ENFORCEMENT.

6 “(a) IN GENERAL.—In addition to any penalty, fine,
7 or other enforcement remedy under this Act, the failure
8 by a telecommunications carrier to implement the require-
9 ments of section 251 or 255, including a failure to comply
10 with the terms of an interconnection agreement approved
11 under section 251, is punishable by a civil penalty of not
12 to exceed \$1,000,000 per offense. Each day of a continu-
13 ing offense shall be treated as a separate violation for pur-
14 poses of levying any penalty under this subsection.

15 “(b) NONCOMPLIANCE WITH INTERCONNECTION OR
16 SEPARATE SUBSIDIARY REQUIREMENTS.—

17 “(1) A Bell operating company that repeatedly,
18 knowingly, and without reasonable cause fails to im-
19 plement an interconnection agreement approved
20 under section 251, to comply with the requirements
21 of such agreement after implementing them, or to
22 comply with the separate subsidiary requirements of
23 this part may be fined up to \$500,000,000 by a dis-
24 trict court of the United States of competent juris-
25 diction.

1 “(2) A Bell operating company that repeatedly,
2 knowingly, and without reasonable cause fails to
3 meet its obligations under section 255 for the provi-
4 sion of interLATA service may have its authority to
5 provide any service the right to provide which is con-
6 ditioned upon meeting such obligations suspended.”.

7 “(c) ENFORCEMENT BY PRIVATE RIGHT OF AC-
8 TION.—

9 “(1) DAMAGES.—Any person who is injured in
10 its business or property by reason of a violation of
11 this section may bring a civil action in any district
12 court of the United States in the district in which
13 the defendant resides or is found or has an agent,
14 without respect to the amount in controversy.

15 “(2) INTEREST.—The court may award under
16 this section, pursuant to a motion by such person
17 promptly made, simple interest on actual damages
18 for the period beginning on the date of service of
19 such person’s pleading setting forth a claim under
20 this title and ending on the date of judgment, or for
21 any shorter period therein, if the court finds that
22 the award of such interest for such period is just in
23 the circumstances.”.

24 (b) CERTAIN BROADCASTS.—Section 1307(a)(2) of
25 title 18, United States Code, is amended—

1 (1) by striking "or" after the semicolon at the
2 end of subparagraph (A);

3 (2) by striking the period at the end of sub-
4 paragraph (B) and inserting a semicolon and "or";
5 and

6 (3) by adding at the end thereof the following:

7 "(C) conducted by a commercial organiza-
8 tion and is contained in a publication published
9 in a State in which such activities or the publi-
10 cation of such activities are authorized or not
11 otherwise prohibited, or broadcast by a radio or
12 television station licensed in a State in which
13 such activities or the broadcast of such activi-
14 ties are authorized or not otherwise prohib-
15 ited.".

16 **SEC. 225. ALARM MONITORING SERVICES.**

17 Part II of title II (47 U.S.C. 251 et seq.), as added
18 by this Act, is amended by inserting after section 257 the
19 following new section:

20 **"SEC. 258. REGULATION OF ENTRY INTO ALARM MONITOR-**
21 **ING SERVICES.**

22 "(a) IN GENERAL.—Except as provided in this sec-
23 tion, a Bell operating company, or any subsidiary or affili-
24 ate of that company, may not provide alarm monitoring
25 services for the protection of life, safety, or property. A

1 Bell operating company may transport alarm monitoring
2 service signals on a common carrier basis only.

3 “(b) AUTHORITY TO PROVIDE ALARM MONITORING
4 SERVICES.—Beginning 3 years after the date of enact-
5 ment of the Telecommunications Act of 1995, a Bell oper-
6 ating company may provide alarm monitoring services for
7 the protection of life, safety, or property if it has been
8 authorized to provide interLATA services under section
9 255 unless the Commission finds that the provision of
10 alarm monitoring services by such company is not in the
11 public interest. The Commission may not find that provi-
12 sion of alarm monitoring services by a Bell operating com-
13 pany is in the public interest until it finds that it has the
14 capability effectively to enforce any requirements, limita-
15 tions, or conditions that may be placed upon a Bell operat-
16 ing company in the provision of alarm monitoring services,
17 including the regulations prescribed under subsection (c).

18 “(c) REGULATIONS REQUIRED.—

19 “(1) Not later than 1 year after the date of en-
20 actment of the Telecommunications Act of 1995, the
21 Commission shall prescribe regulations—

22 “(A) to establish such requirements, limi-
23 tations, or conditions as are—

24 “(i) necessary and appropriate in the
25 public interest with respect to the provision

1 of alarm monitoring services by Bell oper-
2 ating companies and their subsidiaries and
3 affiliates, and

4 “(ii) effective at such time as a Bell
5 operating company or any of its subsidi-
6 aries or affiliates is authorized to provide
7 alarm monitoring services; and

8 “(B) to establish procedures for the receipt
9 and review of complaints concerning violations
10 by such companies of such regulations, or of
11 any other provision of this Act or the regula-
12 tions thereunder, that result in material finan-
13 cial harm to a provider of alarm monitoring
14 services.

15 “(2) A Bell operating company, its subsidiaries
16 and affiliates, and any local exchange carrier are
17 prohibited from recording or using in any fashion
18 the occurrence or contents of calls received by pro-
19 viders of alarm monitoring services for the purposes
20 of marketing such services on behalf of the Bell op-
21 erating company, any of its subsidiaries or affiliates,
22 the local exchange carrier, or any other entity. Any
23 regulations necessary to enforce this paragraph shall
24 be issued initially within 6 months after the date of
25 enactment of the Telecommunications Act of 1995.

1 “(d) EXPEDITED CONSIDERATION OF COM-
2 PLAINTS.—The procedures established under sub-
3 section (c) shall ensure that the Commission will
4 make a final determination with respect to any com-
5 plaint described in such subsection within 120 days
6 after receipt of the complaint. If the complaint con-
7 tains an appropriate showing that the alleged viola-
8 tion occurred, as determined by the Commission in
9 accordance with such regulations, the Commission
10 shall, within 60 days after receipt of the complaint,
11 issue a cease and desist order to prevent the Bell op-
12 erating company and its subsidiaries and affiliates
13 from continuing to engage in such violation pending
14 such final determination.

15 “(e) REMEDIES.—The Commission may use any rem-
16 edy available under title V of this Act to terminate and
17 punish violations described in subsection (c). Such rem-
18 edies may include, if the Commission determines that such
19 violation was willful or repeated, ordering the Bell operat-
20 ing company or its subsidiary or affiliate to cease offering
21 alarm monitoring services.

22 “(f) SAVINGS PROVISION.—Subsections (a) and (b)
23 do not prohibit or limit the provision of alarm monitoring
24 services by a Bell operating company that was engaged

1 in providing those services as of December 31, 1994, to
2 the extent that such company—

3 “(1) continues to provide those services through
4 the subsidiary or affiliate through which it was pro-
5 viding them on that date; and

6 “(2) does not acquire, directly or indirectly, an
7 equity interest in another entity engaged in provid-
8 ing alarm monitoring services, and does not acquire,
9 or enter into an agreement to provide, the alarm
10 monitoring service activities of another entity.

11 “(g) ALARM MONITORING SERVICES DEFINED.—As
12 used in this section, the term ‘alarm monitoring services’
13 means services that detect threats to life, safety, or prop-
14 erty by burglary, fire, vandalism, bodily injury, or other
15 emergency through the use of devices that transmit signals
16 to a central point in a customer’s residence, place of busi-
17 ness, or other fixed premises which—

18 “(1) retransmits such signals to a remote mon-
19 itoring center by means of telecommunications facili-
20 ties of the Bell operating company and any subsidi-
21 ary or affiliate; and

22 “(2) serves to alert persons at the monitoring
23 center of the need to inform customers, other per-
24 sons, or police, fire, rescue, or other security or pub-
25 lic safety personnel of the threat at such premises.

1 Such term does not include medical monitoring devices at-
2 tached to individuals for the automatic surveillance of on-
3 going medical conditions.”.

4 TITLE III—AN END TO REGULATION

5 SEC. 301. TRANSITION TO COMPETITIVE PRICING.

6 (a) PRICING FLEXIBILITY.—

7 (1) IN GENERAL.—The Commission and the
8 States shall provide to telecommunications carriers
9 price flexibility in the rates charged consumers for
10 the provision of telecommunications services within
11 one year after the date of enactment of this Act.
12 The Commission or a State may establish the rate
13 consumers may be charged for services included in
14 the definition of universal service, as well as the con-
15 tribution, if any, that all carriers must contribute for
16 the preservation and advancement of universal serv-
17 ice.

18 (2) CONSUMER PROTECTION.—The Commission
19 and the States shall ensure that rates for residential
20 telephone service remain just, reasonable, and af-
21 fordable as competition develops for telephone ex-
22 change service and telephone exchange access serv-
23 ice. Where only a single carrier provides a service in
24 a market, the Commission or a State may establish
25 the rate that a carrier may charge for any such serv-

1 ice if such rate is necessary for the protection of
2 consumers. Any such rate shall cease to be regulated
3 whenever the Commission or a State determines that
4 it is no longer necessary for the protection of con-
5 sumers. The Commission shall establish cost alloca-
6 tion guidelines for facilities owned by an essential
7 telecommunications carrier that are used for the
8 provision of both services included in the definition
9 of universal service and video programming sold by
10 such carrier directly to subscribers, if such allocation
11 is necessary for the protection of consumers.

12 (3) RATE-OF-RETURN REGULATION ELIMI-
13 NATED.—

14 (A) In instituting the price flexibility re-
15 quired under paragraph (1) the Commission
16 and the States shall establish alternative forms
17 of regulation for Tier 1 telecommunications car-
18 riers that do not include regulation of the rate
19 of return earned by such carrier as part of a
20 plan that provides for any or all of the follow-
21 ing—

22 (i) the advancement of competition in
23 the provision of telecommunications serv-
24 ices;

25 (ii) improvements in productivity;

- 1 (iii) improvements in service quality;
2 (iv) measures to ensure customers of
3 non-competitive services do not bear the
4 risks associated with the provision of com-
5 petitive services;
6 (v) enhanced telecommunications serv-
7 ices for educational institutions; or
8 (vi) any other measures Commission
9 or a State, as appropriate, determines to
10 be in the public interest.

11 (B) The Commission or a State, as appro-
12 priate, may apply such alternative forms of reg-
13 ulation to any other telecommunications carrier
14 that is subject to rate of return regulation
15 under this Act.

16 (C) Any such alternative form of regula-
17 tion—

- 18 (i) shall be consistent with the objec-
19 tives of preserving and advancing universal
20 service, guaranteeing high quality service,
21 ensuring just, reasonable, and affordable
22 rates, and encouraging economic efficiency;
23 and
24 (ii) shall meet such other criteria as
25 the Commission or a State, as appropriate,

1 finds to be consistent with the public inter-
2 est, convenience, and necessity.

3 (b) TRANSITION PLAN REQUIRED.—If the Commis-
4 sion or a State adopts rules for the distribution of support
5 payments under section 253 of the Communications Act
6 of 1934, as amended by this Act, such rules shall include
7 a transition plan to allow essential telecommunications
8 carriers to provide for an orderly transition from the uni-
9 versal service support mechanisms in existence upon the
10 date of enactment of this Act and the support mechanisms
11 established by the Commission and the States under this
12 Act or the Communications Act of 1934 as amended by
13 this Act. Any such transition plan shall—

14 (1) provide a phase-in of the price flexibility re-
15 quirements under subsection (a) for an essential
16 telecommunications carrier that is also a rural tele-
17 phone company; and

18 (2) require the United States Government and
19 the States, where permitted by law, to modify any
20 regulatory requirements (including conditions for the
21 repayment of loans and the depreciation of assets)
22 applicable to carriers designated as essential tele-
23 communications carriers in order to more accurately
24 reflect the conditions that would be imposed in a
25 competitive market for similar assets or services.

1 (c) DUTY TO PROVIDE SUBSCRIBER LIST INFORMA-
2 TION.—

3 (1) IN GENERAL.—A carrier that provides local
4 exchange telephone service shall provide subscriber
5 list information gathered in its capacity as a pro-
6 vider of such service on a timely and unbundled
7 basis, under nondiscriminatory and reasonable rates,
8 terms, and conditions, to any person upon request.

9 (2) SUBSCRIBER LIST INFORMATION DE-
10 FINED.—As used in this subsection, the term “sub-
11 scriber list information” means any information—

12 (A) identifying the listed names of sub-
13 scribers of a carrier and such subscribers’ listed
14 telephone numbers, addresses, or primary ad-
15 vertising classifications, as such classifications
16 are assigned at the time of the establishment of
17 service, or any combination of such names,
18 numbers, addresses, or classifications; and

19 (B) that the carrier or an affiliate has pub-
20 lished, caused to be published, or accepted for
21 publication in a directory in any format.

22 **SEC. 302. BIENNIAL REVIEW OF REGULATIONS.**

23 Part II of title II (47 U.S.C. 251 et seq.), as added
24 by this Act, is amended by inserting after section 258 the
25 following new section:

1 **"SEC. 259. REGULATORY REFORM.**

2 “(a) BIENNIAL REVIEW OF REGULATIONS.—In every
3 odd-numbered year (beginning with 1997), the Commis-
4 sion, with respect to its regulations under this Act, and
5 a Federal-State Joint Board established under section
6 410, for State regulations—

7 “(1) shall review all regulations issued under
8 this Act, or under State law, in effect at the time
9 of the review that apply to operations or activities of
10 providers of any telecommunications services; and

11 “(2) shall determine whether any such regula-
12 tion is no longer necessary in the public interest as
13 the result of meaningful economic competition be-
14 tween the providers of such service.

15 “(b) EFFECT OF DETERMINATION.—The Commis-
16 sion shall repeal any regulation it determines to be no
17 longer necessary in the public interest. The Joint Board
18 shall notify the Governor of any State of any State regula-
19 tion it determines to be no longer necessary in the public
20 interest.”.

21 **SEC. 303. REGULATORY FORBEARANCE.**

22 Part II of title II (47 U.S.C. 251 et seq.), as added
23 by this Act, is amended by inserting after section 259 the
24 following new section:

1 "SEC. 260. COMPETITION IN PROVISION OF TELECOMMUNI-
2 CATIONS SERVICE.

3 "(a) REGULATORY FLEXIBILITY.—The Commission
4 may forbear from applying any regulation or any provision
5 of this Act to a telecommunications carrier or service, or
6 class of carriers or services, in any or some of its or their
7 geographic markets if the Commission determines that—

8 "(1) enforcement of such regulation or provi-
9 sion is not necessary to ensure that the charges,
10 practices, classifications, or regulations by, for, or in
11 connection with that carrier or service are just and
12 reasonable and are not unjustly or unreasonably dis-
13 criminatory;

14 "(2) enforcement of such regulation or provi-
15 sion is not necessary for the protection of consum-
16 ers; and

17 "(3) forbearance from applying such regulation
18 or provision is consistent with the public interest.

19 "(b) COMPETITIVE EFFECT TO BE WEIGHED.—In
20 making the determination under subsection (a)(3), the
21 Commission shall consider whether forbearance from en-
22 forcing the regulation or provision will promote competi-
23 tive market conditions, including the extent to which such
24 forbearance will enhance competition among providers of
25 telecommunications services. If the Commission deter-
26 mines that such forbearance will promote competition

1 among providers of telecommunications services, that de-
2 termination may be the basis for a Commission finding
3 that forbearance is in the public interest.

4 “(c) LIMITATION.—Except as provided in section
5 251(i)(3), the Commission may not waive the unbundling
6 requirements of section 251(b) or 255(b)(2) under sub-
7 section (a) until it determines that those requirements
8 have been fully implemented.”.

9 **SEC. 304. ADVANCED TELECOMMUNICATIONS INCENTIVES.**

10 (a) IN GENERAL.—The Commission and each State
11 commission with regulatory jurisdiction over telecommuni-
12 cations services shall encourage the deployment on a rea-
13 sonable and timely basis of advanced telecommunications
14 capability to all Americans (including, in particular, ele-
15 mentary and secondary schools and classrooms) by utiliz-
16 ing, in a manner consistent with the public interest, con-
17 venience, and necessity, price cap regulation, regulatory
18 forbearance, or other regulating methods that remove bar-
19 riers to infrastructure investment.

20 (b) INQUIRY.—The Commission shall, within 2 years
21 after the date of enactment of this Act, and regularly
22 thereafter, initiate a notice of inquiry concerning the avail-
23 ability of advanced telecommunications capability to all
24 Americans (including, in particular, elementary and sec-
25 ondary schools and classrooms) and shall complete the in-

1 quiry within 180 days after its initiation. In the inquiry,
2 the Commission shall determine whether advanced tele-
3 communications capability is being deployed to all Ameri-
4 cans in a reasonable and timely fashion. If the Commis-
5 sion's determination is negative, it shall take immediate
6 action under this section, and it may preempt State com-
7 missions that fail to act to ensure such availability.

8 (c) DEFINITIONS.—For purposes of this section—

9 (1) COMMUNICATIONS ACT TERMS.—Any term
10 used in this section which is defined in the Commu-
11 nications Act of 1934 shall have the same meaning
12 as it has in that Act.

13 (2) ADVANCED TELECOMMUNICATIONS CAPA-
14 BILITY.—The term “advanced telecommunications
15 capability” means high-speed, switched, broadband
16 telecommunications capability that enables users to
17 originate and receive high-quality voice, data, graph-
18 ics, and video telecommunications.

19 (3) ELEMENTARY AND SECONDARY SCHOOLS.—
20 The term “elementary and secondary schools”
21 means elementary schools and secondary schools, as
22 defined in paragraphs (14) and (25), respectively, of
23 section 10401 of the Elementary and Secondary
24 Education Act of 1965 (20 U.S.C. 8801).

1 SEC. 305. REGULATORY PARITY.

2 Within 3 years after the date of enactment of this
3 Act, and periodically thereafter, the Commission shall—

4 (1) issue such modifications or terminations of
5 the regulations applicable to persons offering tele-
6 communications or information services under title
7 II, III, or VI of the Communications Act of 1934 as
8 are necessary to implement the changes in such Act
9 made by this Act;

10 (2) in the regulations that apply to integrated
11 telecommunications service providers, take into ac-
12 count the unique and disparate histories associated
13 with the development and relative market power of
14 such providers, making such modifications and ad-
15 justments as are necessary in the regulation of such
16 providers as are appropriate to enhance competition
17 between such providers in light of that history; and

18 (3) provide for periodic reconsideration of any
19 modifications or terminations made to such regula-
20 tions, with the goal of applying the same set of regu-
21 latory requirements to all integrated telecommuni-
22 cations service providers, regardless of which par-
23 ticular telecommunications or information service
24 may have been each provider's original line of busi-
25 ness.

1 SEC. 306. AUTOMATED SHIP DISTRESS AND SAFETY SYS-
2 TEMS.

3 Notwithstanding any provision of the Communica-
4 tions Act of 1934 or any other provision of law or regula-
5 tion, a ship documented under the laws of the United
6 States operating in accordance with the Global Maritime
7 Distress and Safety System provisions of the Safety of
8 Life at Sea Convention shall not be required to be
9 equipped with a radio telegraphy station operated by one
10 or more radio officers or operators.

11 SEC. 307. TELECOMMUNICATIONS NUMBERING ADMINIS-
12 TRATION.

13 Part II of title II (47 U.S.C. 251 et seq.), as added
14 by this Act, is amended by inserting after section 260 the
15 following new section:

16 "SEC. 261. TELECOMMUNICATIONS NUMBERING ADMINIS-
17 TRATION.

18 "(a) INTERIM NUMBER PORTABILITY.—In connec-
19 tion with any interconnection agreement reached under
20 section 251 of this Act, a local exchange carrier shall make
21 available interim telecommunications number portability,
22 upon request, beginning on the date of enactment of the
23 Telecommunications Act of 1995.

24 "(b) FINAL NUMBER PORTABILITY.—In connection
25 with any interconnection agreement reached under section
26 251 of this Act, a local exchange carrier shall make avail-

1 able final telecommunications number portability, upon re-
2 quest, when the Commission determines that final tele-
3 communications number portability is technically feasible.

4 “(c) NEUTRAL ADMINISTRATION OF NUMBERING
5 PLANS.—

6 “(1) NATIONWIDE NEUTRAL NUMBER SYSTEM
7 COMPLIANCE.— A telecommunications carrier pro-
8 viding telephone exchange service shall comply with
9 the guidelines, plan, or rules established by an im-
10 partial entity designated by the Commission for the
11 administration of a nationwide neutral number sys-
12 tem.

13 “(2) OVERLAY OF AREA CODES NOT PER-
14 MITTED.—All telecommunications carriers providing
15 telephone exchange service in the same telephone
16 service area shall be assigned the same numbering
17 plan area code under such guideline, plan, or rules.

18 “(d) COSTS.—The cost of establishing neutral num-
19 ber administration arrangements and number portability
20 shall be borne by all telecommunications carriers on a
21 competitively neutral basis.”.

22 SEC. 308. ACCESS BY PERSONS WITH DISABILITIES.

23 (a) IN GENERAL.—Part II of title II (47 U.S.C. 251
24 et seq.), as added by this Act, is amended by inserting
25 after section 261 the following new section:

1 **"SEC. 262. ACCESS BY PERSONS WITH DISABILITIES.**

2 **"(a) DEFINITIONS.—As used in this section—**

3 **"(1) DISABILITY.—**The term 'disability' has the
4 meaning given to it by section 3(2)(A) of the Ameri-
5 cans with Disabilities Act of 1990 (42 U.S.C.
6 12102(2)(A)).

7 **"(2) READILY ACHIEVABLE.—**The term 'readily
8 achievable' has the meaning given to it by section
9 301(9) of that Act (42 U.S.C. 12181(9)).

10 **"(b) MANUFACTURING.—**A manufacturer of tele-
11 communications equipment and customer premises equip-
12 ment shall ensure that the equipment is designed, devel-
13 oped, and fabricated to be accessible to and usable by indi-
14 viduals with disabilities, if readily achievable.

15 **"(c) TELECOMMUNICATIONS SERVICES.—**A provider
16 of telecommunications service shall ensure that the service
17 is accessible to and usable by individuals with disabilities,
18 if readily achievable.

19 **"(d) COMPATIBILITY.—**Whenever the requirements
20 of subsections (b) and (c) are not readily achievable, such
21 a manufacturer or provider shall ensure that the equip-
22 ment or service is compatible with existing peripheral de-
23 vices or specialized customer premises equipment com-
24 monly used by individuals with disabilities to achieve ac-
25 cess, if readily achievable.

1 “(e) STANDARDS.—Within 1 year after the date of
2 enactment of the Telecommunications Act of 1995, the
3 Architectural and Transportation Barriers Compliance
4 Board described in section 504 of the Americans with Dis-
5 abilities Act of 1990 (42 U.S.C. 12204) shall develop
6 standards for accessibility of telecommunications equip-
7 ment, customer premises equipment, and telecommuni-
8 cations services, in conjunction with the National Tele-
9 communications and Information Administration and the
10 National Institute of Standards and Technology. The
11 Board shall review and update the standards periodically.

12 “(f) CLOSED CAPTIONING.—

13 “(1) IN GENERAL.—The Commission shall en-
14 sure that—

15 “(A) video programming is accessible
16 through closed captions, if readily achievable,
17 except as provided in paragraph (2); and

18 “(B) video programming providers or own-
19 ers maximize the accessibility of video program-
20 ming previously published or exhibited through
21 the provision of closed captions, if readily
22 achievable, except as provided in paragraph (2).

23 “(2) EXEMPTIONS.—Notwithstanding para-
24 graph (1)—

1 “(A) the Commission may exempt pro-
2 grams, classes of programs, locally produced
3 programs, providers, classes of providers, or
4 services for which the Commission has deter-
5 mined that the provision of closed captioning
6 would not be readily achievable to the provider
7 or owner of such programming;

8 “(B) a provider of video programming or
9 the owner of any program carried by the pro-
10 vider shall not be obligated to supply closed
11 captions if such action would be inconsistent
12 with a binding contract in effect on the date of
13 enactment of the Telecommunications Act of
14 1995 for the remaining term of that contract
15 (determined without regard to any extension of
16 such term), except that nothing in this subpara-
17 graph relieves a video programming provider of
18 its obligation to provide services otherwise re-
19 quired by Federal law; and

20 “(C) a provider of video programming or a
21 program owner may petition the Commission
22 for an exemption from the requirements of this
23 section, and the Commission may grant such a
24 petition upon a showing that the requirements

1 contained in this section would not be readily
2 achievable.

3 “(3) STUDIES.—The Commission shall under-
4 take studies of the current extent (as of the date of
5 enactment of the Telecommunications Act of 1995)
6 of—

7 “(A) closed captioning of video program-
8 ming and of previously published video pro-
9 gramming;

10 “(B) providers of video programming;

11 “(C) the cost and market for closed cap-
12 tioning;

13 “(D) strategies to improve competition and
14 innovation in the provision of closed captioning;
15 and

16 “(E) such other matters as the Commis-
17 sion considers relevant.

18 “(g) REGULATIONS.—The Commission shall, not
19 later than 18 months after the date of enactment of the
20 Telecommunications Act of 1995, prescribe regulations to
21 implement this section. The regulations shall be consistent
22 with the standards developed by the Architectural and
23 Transportation Barriers Compliance Board in accordance
24 with subsection (e).

1 “(h) ENFORCEMENT.—The Commission shall enforce
2 this section. The Commission shall resolve, by final order,
3 a complaint alleging a violation of this section within 180
4 days after the date on which the complaint is filed with
5 the Commission.”.

6 (b) VIDEO DESCRIPTION.—Within 6 months after the
7 date of enactment of this Act, the Commission shall un-
8 dertake a study of the feasibility of requiring the use of
9 video descriptions on video programming in order to en-
10 sure the accessibility of video programming to individuals
11 with visual impairments. For purposes of this subsection,
12 the term “video description” means the insertion of audio
13 narrative descriptions of a television program’s key visual
14 elements into natural pauses between the program’s dia-
15 logue.

16 **SEC. 309. RURAL MARKETS.**

17 Part II of title II (47 U.S.C. 251 et seq.), as added
18 by this Act, is amended by inserting after section 262 the
19 following new section:

20 **“SEC. 263. RURAL MARKETS.**

21 “(a) STATE AUTHORITY IN RURAL MARKETS.—Ex-
22 cept as provided in section 251(i)(3), a State may not
23 waive or modify any requirements of section 251, but may
24 adopt statutes or regulations that are no more restrictive
25 than—

1 “(1) to require an enforceable commitment by
2 each competing provider of telecommunications serv-
3 ice to offer universal service comparable to that of-
4 fered by the rural telephone company currently pro-
5 viding service in that service area, and to make such
6 service available within 24 months of the approval
7 date to all consumers throughout that service area
8 on a common carrier basis, either using the appli-
9 cant’s facilities or through its own facilities and re-
10 sale of services using another carrier’s facilities (in-
11 cluding the facilities of the rural telephone com-
12 pany), and subject to the same terms, conditions,
13 and rate structure requirements as those applicable
14 to the rural telephone company currently providing
15 universal service;

16 “(2) to require that the State must approve an
17 application by a competing telecommunications car-
18 rier to provide services in a market served by a rural
19 telephone company and that approval be based on
20 sufficient written public findings and conclusions to
21 demonstrate that such approval is in the public in-
22 terest and that there will not be a significant ad-
23 verse impact on users of telecommunications services
24 or on the provision of universal service;

1 “(3) to encourage the development and deploy-
2 ment of advanced telecommunications and informa-
3 tion infrastructure and services in rural areas; or

4 “(4) to protect the public safety and welfare,
5 ensure the continued quality of telecommunications
6 and information services, or safeguard the rights of
7 consumers.

8 “(b) PREEMPTION.—Upon a proper showing, the
9 Commission may preempt any State statute or regulation
10 that the Commission finds to be inconsistent with the
11 Commission’s regulations implementing this section, or an
12 arbitrary or unreasonably discriminatory application of
13 such statute or regulation. The Commission shall act upon
14 any bona fide petition filed under this subsection within
15 180 days of receiving such petition. Pending such action,
16 the Commission may, in the public interest, suspend or
17 modify application of any statute or regulation to which
18 the petition applies.”.

19 **SEC. 310. TELECOMMUNICATIONS SERVICES FOR HEALTH**
20 **CARE PROVIDERS FOR RURAL AREAS, EDU-**
21 **CATIONAL PROVIDERS, AND LIBRARIES.**

22 Part II of title II (47 U.S.C. 251 et seq.), as added
23 by this Act, is amended by inserting after section 263 the
24 following:

1 **"SEC. 284. TELECOMMUNICATIONS SERVICES FOR CERTAIN**
2 **PROVIDERS.**

3 **"(a) IN GENERAL.—**

4 **"(1) HEALTH CARE PROVIDERS FOR RURAL**
5 **AREAS.—**A telecommunications carrier designated as
6 an essential telecommunications carrier under sec-
7 tion 214(d) shall, upon receiving a bona fide request,
8 provide telecommunications services which are nec-
9 essary for the provision of health care services, in-
10 cluding instruction relating to such service, at rates
11 that are reasonably comparable to rates charged for
12 similar services in urban areas to any public or non-
13 profit health care provider that serves persons who
14 reside in rural areas.

15 **"(2) EDUCATIONAL PROVIDERS AND LIBRAR-**
16 **IES.—**Any telecommunications carrier shall, upon re-
17 ceiving a bona fide request, provide universal service
18 (as defined under section 253) at rates that are af-
19 fordable and not higher than the incremental cost
20 thereof to elementary schools, secondary schools, and
21 libraries for telecommunications services that permit
22 such schools and libraries to provide or receive edu-
23 cational services.

24 **"(b) SUPPORT PAYMENTS.—**If the Commission
25 adopts rules for the distribution of support payments for
26 the preservation and advancement of universal service, the

1 Commission shall include the amount of the support pay-
2 ments reasonably necessary to provide universal service
3 (including any costs related to the provision of comparable
4 rates under subsection (a)(1)) to public institutional tele-
5 communications users in any universal service support
6 mechanism it may establish under section 253.

7 “(c) ADVANCED SERVICES.—The Commission shall
8 establish rules—

9 “(1) to enhance, to the extent technically fea-
10 sible and economically reasonable, the availability of
11 advanced telecommunications and information serv-
12 ices to all public and nonprofit elementary and sec-
13 ondary school classrooms, health care providers, and
14 libraries;

15 “(2) to ensure that appropriate functional re-
16 quirements or performance standards, or both, in-
17 cluding interconnection standards, are established
18 for telecommunications carriers that connect such
19 public institutional telecommunications users with
20 the public switched network;

21 “(3) to define the circumstances under which a
22 telecommunications carrier may be required to con-
23 nect its network to such public institutional tele-
24 communications users; and

1 “(4) to address other matters as the Commis-
2 sion may determine.

3 “(d) DEFINITIONS.—

4 “(1) ELEMENTARY AND SECONDARY
5 SCHOOLS.—The term ‘elementary and secondary
6 schools’ means elementary schools and secondary
7 schools, as defined in paragraphs (14) and (25), re-
8 spectively, of section 14101 of the Elementary and
9 Secondary Education Act of 1965 (20 U.S.C. 8801).

10 “(2) UNIVERSAL SERVICE.—The Commission
11 may in the public interest provide a separate defini-
12 tion of universal service under section 253(b) for ap-
13 plication only to public institutional telecommuni-
14 cations users.

15 “(3) HEALTH CARE PROVIDER.—The term
16 ‘health care provider’ means—

17 “(A) Post-secondary educational institu-
18 tions, teaching hospitals, and medical schools.

19 “(B) Community health centers or health
20 centers providing health care to migrants.

21 “(C) Local health departments or agencies.

22 “(D) Community mental health centers.

23 “(E) Not-for-profit hospitals.

24 “(F) Rural health clinics.

1 “(G) Consortia of health care providers
2 consisting of one or more entities described in
3 subparagraphs (A) through (F).

4 “(4) PUBLIC INSTITUTIONAL TELECOMMUNI-
5 CATIONS USER.—The term ‘public institutional tele-
6 communications user’ means an elementary or sec-
7 ondary school, a library, or a health care provider as
8 those terms are defined in this subsection.”.

9 **SEC. 311. PROVISION OF PAYPHONE SERVICE AND**
10 **TELEMESSAGING SERVICE.**

11 Part II of title II (47 U.S.C. 251 et seq.), as added
12 by this Act, is amended by adding after section 264 the
13 following new section:

14 **“SEC. 265. PROVISION OF PAYPHONE SERVICE AND**
15 **TELEMESSAGING SERVICE.**

16 “(a) NONDISCRIMINATION SAFEGUARDS.—Any Bell
17 operating company that provides payphone service or
18 telemessaging service—

19 “(1) shall not subsidize its payphone service or
20 telemessaging service directly or indirectly with reve-
21 nue from its telephone exchange service or its ex-
22 change access service; and

23 “(2) shall not prefer or discriminate in favor of
24 its payphone service or telemessaging service.

25 “(b) DEFINITIONS.—As used in this section—

1 “(1) The term ‘payphone service’ means the
2 provision of telecommunications service through pub-
3 lic or semi-public pay telephones, and includes the
4 provision of service to inmates in correctional insti-
5 tutions.

6 “(2) The term ‘telemessaging service’ means
7 voice mail and voice storage and retrieval services,
8 any live operator services used to record, transcribe,
9 or relay messages (other than telecommunications
10 relay services), and any ancillary services offered in
11 combination with these services.

12 “(c) REGULATIONS.—Not later than 18 months after
13 the date of enactment of the Telecommunications Act of
14 1995, the Commission shall complete a rulemaking pro-
15 ceeding to prescribe regulations to carry out this section.
16 In that rulemaking proceeding, the Commission shall de-
17 termine whether, in order to enforce the requirements of
18 this section, it is appropriate to require the Bell operating
19 companies to provide payphone service or telemessaging
20 service through a separate subsidiary that meets the re-
21 quirements of section 252.”.

1 TITLE IV—OBSCENE, HARRASSING, AND
2 WRONGFUL UTILIZATION OF TELE-
3 COMMUNICATIONS FACILITIES

4 SEC. 401. SHORT TITLE.

5 This title may be cited as the “Communications De-
6 cency Act of 1995”.

7 SEC. 402. OBSCENE OR HARASSING USE OF TELECOMMUNI-
8 CATIONS FACILITIES UNDER THE COMMU-
9 NICATIONS ACT OF 1934.

10 (a) OFFENSES.—Section 223 (47 U.S.C. 223) is
11 amended—

12 (1) in subsection (a)(1)—

13 (A) by striking out “telephone” in the
14 matter above subparagraph (A) and inserting
15 “telecommunications device”;

16 (B) by striking out subparagraph (A) and
17 inserting the following:

18 “(A) knowingly—

19 “(i) makes, creates, or solicits, and

20 “(ii) initiates the transmission of,

21 any comment, request, suggestion, proposal,
22 image, or other communication which is ob-
23 scene, lewd, lascivious, filthy, or indecent;”;

24 (C) by striking out subparagraph (B) and
25 inserting the following:

1 “(B) makes a telephone call or utilizes a
2 telecommunications device, whether or not con-
3 versation or communications ensues, without
4 disclosing his identity and with intent to annoy,
5 abuse, threaten, or harass any person at the
6 called number or who receives the communica-
7 tion;” and

8 (D) by striking out subparagraph (D) and
9 inserting the following:

10 “(D) makes repeated telephone calls or re-
11 peatedly initiates communication with a tele-
12 communications device, during which conversa-
13 tion or communication ensues, solely to harass
14 any person at the called number or who receives
15 the communication; or”;

16 (2) in subsection (a)(2), by striking “telephone”
17 and inserting “telecommunications” and by striking
18 “section” and inserting “subsection”;

19 (3) in subsection (b)(1)—

20 (A) by striking subparagraph (A) and in-
21 serting the following:

22 “(A) within the United States, by means of
23 a telecommunications device—

24 “(i) makes, creates, or solicits, and

25 “(ii) purposefully makes available,

1 any obscene communication for commercial pur-
2 poses to any person, regardless of whether the
3 maker of such communication placed the call or
4 initiated the communication; or”; and

5 (B) in subparagraph (B), by striking “tele-
6 phone facility” and inserting “telecommuni-
7 cations facility”; and

8 (4) in subsection (b)(2)—

9 (A) by striking subparagraph (A) and in-
10 serting the following:

11 “(A) within the United States, by means of
12 telephone or telecommunications device,

13 “(i) makes, creates, or solicits, and

14 “(ii) purposefully makes available (di-
15 rectly or by recording device),

16 any indecent communication for commercial
17 purposes which is available to any person under
18 18 years of age or to any other person without
19 that person’s consent, regardless of whether the
20 maker of such communication placed the call;
21 or”; and

22 (B) in subparagraph (B), by striking “tele-
23 phone facility” and inserting in lieu thereof
24 “telecommunications facility”.

1 (b) PENALTIES.—Section 223 (47 U.S.C. 223) is
2 amended—

3 (1) by striking out “\$50,000” each place it ap-
4 pears and inserting “\$100,000”; and

5 (2) by striking “six months” each place it ap-
6 pears and inserting “2 years”.

7 (c) PROHIBITION ON PROVISION OF ACCESS.—Sec-
8 tion 223(c)(1) (47 U.S.C. 223(c)(1)) is amended by strik-
9 ing “telephone” and inserting “telecommunications de-
10 vice”.

11 (d) ADDITIONAL DEFENSES.—Section 223 (47
12 U.S.C. 223) is amended by adding at the end the follow-
13 ing:

14 “(d) ADDITIONAL DEFENSES; RESTRICTIONS ON AC-
15 CESS; JUDICIAL REMEDIES RESPECTING RESTRIC-
16 TIONS.—

17 “(1) No person shall be held to have violated
18 this section with respect to any action by that per-
19 son or a system under his control that is limited
20 solely to the provision of access, including trans-
21 mission, downloading, intermediate storage, naviga-
22 tional tools, and related capabilities not involving the
23 creation or alteration of the content of the commu-
24 nications, for another person’s communications to or

1 from a service, facility, system, or network not under
2 that person's control.

3 "(2) It is a defense to prosecution under sub-
4 sections (a)(2), (b)(1)(B), and (b)(2)(B) that a de-
5 fendant lacked editorial control over the communica-
6 tion specified in this section.

7 "(3) It is a defense to prosecution under sub-
8 sections (a)(2), (b)(1)(B), and (b)(2)(B) that a de-
9 fendant has taken good faith, reasonable steps, as
10 appropriate—

11 "(A) to provide users with the means to re-
12 strict access to communications described in
13 this section;

14 "(B) provide users with warnings concern-
15 ing the potential for access to such communica-
16 tions;

17 "(C) to respond to complaints from those
18 who are subjected to such communications;

19 "(D) to provide mechanisms to enforce a
20 provider's terms of service governing such com-
21 munications; or

22 "(E) to implement such other measures as
23 the Commission may prescribe to carry out the
24 purposes of this paragraph. Nothing in this sec-
25 tion in and of itself shall be construed to treat

1 enhanced information services as common car-
2 riage.

3 “(4) In addition to other defenses authorized
4 under this section, it shall be a defense to prosecu-
5 tion under subsection (b) that a defendant is not en-
6 gaged in a commercial activity that has as a pre-
7 dominant purpose an activity specified in that sub-
8 section.

9 “(5) No cause of action may be brought in any
10 court or administrative agency against any person
11 on account of any action which the person has taken
12 in good faith to implement a defense authorized
13 under this section or otherwise to restrict or prevent
14 the transmission of, or access to, a communication
15 specified in this section. The preceding sentence
16 shall not apply where the good faith defenses under
17 subsection (c)(2) apply.

18 “(6) No State or local government may impose
19 any liability in connection with a violation described
20 in subsection (a)(2), (b)(1)(B), (b)(2)(B) that is in-
21 consistent with the treatment of those violations
22 under this section provided, however, that nothing
23 herein shall preclude any State or local government
24 from enacting and enforcing complementary over-
25 sight, liability, and regulatory systems, procedures,

1 and requirements, so long as such systems, proce-
2 dures, and requirements govern only intrastate serv-
3 ices and do not result in the imposition of inconsis-
4 ent obligations on the provision of interstate serv-
5 ices.

6 “(e) KNOWINGLY DEFINED.—For purposes of sub-
7 sections (a) and (b), the term ‘knowingly’ means an inten-
8 tional act with actual knowledge of the specific content
9 of the communication specified in this section to another
10 person.”.

11 (e) CONFORMING AMENDMENT.—The section head-
12 ing for section 223 is amended to read as follows:

13 **“SEC. 223. OBSCENE OR HARASSING UTILIZATION OF TELE-**
14 **COMMUNICATIONS DEVICES AND FACILITIES**
15 **IN THE DISTRICT OF COLUMBIA OR IN INTER-**
16 **STATE OR FOREIGN COMMUNICATIONS”.**

17 **SEC. 403. OBSCENE PROGRAMMING ON CABLE TELEVISION.**

18 Section 639 (47 U.S.C. 559) is amended by striking
19 “\$10,000” and inserting “\$100,000”.

20 **SEC. 404. BROADCASTING OBSCENE LANGUAGE ON RADIO.**

21 Section 1464 of title 18, United States Code, is
22 amended by striking out “\$10,000” and inserting
23 “\$100,000”.

1 SEC. 405. INTERCEPTION AND DISCLOSURE OF ELEC-
2 TRONIC COMMUNICATIONS.

3 Section 2511 of title 18, United States Code, is
4 amended—

5 (1) in paragraph (1)—

6 (A) by striking “wire, oral, or electronic
7 communication” each place it appears and in-
8 serting “wire, oral, electronic, or digital commu-
9 nication”, and

10 (B) in subdivision (b), by striking “oral
11 communication” in the matter above clause (i)
12 and inserting “communication”; and

13 (2) in paragraph (2)(a), by striking “wire or
14 electronic communication service” each place it ap-
15 pears (other than in the second sentence) and insert-
16 ing “wire, electronic, or digital communication serv-
17 ice”.

18 SEC. 406. ADDITIONAL PROHIBITION ON BILLING FOR
19 TOLL-FREE TELEPHONE CALLS.

20 Section 228(c)(7) (47 U.S.C. 228(c)(7)) is amend-
21 ed—

22 (1) by striking “or” at the end of subparagraph
23 (C);

24 (2) by striking the period at the end of sub-
25 paragraph (D) and inserting a semicolon and “or”;
26 and

1 (3) by adding at the end thereof the following:

2 “(E) the calling party being assessed, by
3 virtue of being asked to connect or otherwise
4 transfer to a pay-per-call service, a charge for
5 the call.”.

6 **SEC. 407. SCRAMBLING OF CABLE CHANNELS FOR**
7 **NONSUBSCRIBERS.**

8 Part IV of title VI (47 U.S. C. 551 et seq.) is amend-
9 ed by adding at the end the following:

10 **“SEC. 640. SCRAMBLING OF CABLE CHANNELS FOR**
11 **NONSUBSCRIBERS.**

12 “(a) **REQUIREMENT.**—In providing video program-
13 ming unsuitable for children to any subscriber through a
14 cable system, a cable operator shall fully scramble or oth-
15 erwise fully block the video and audio portion of each
16 channel carrying such programming upon subscriber re-
17 quest and without any charge so that one not a subscriber
18 does not receive it.

19 “(b) **DEFINITION.**—As used in this section, the term
20 ‘scramble’ means to rearrange the content of the signal
21 of the programming so that the programming cannot be
22 received by persons unauthorized to receive the program-
23 ming.”.

1 SEC. 408. CABLE OPERATOR REFUSAL TO CARRY CERTAIN
2 PROGRAMS.

3 (a) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL
4 CHANNELS.—Section 611(e) (47 U.S.C. 531(e)) is
5 amended by inserting before the period the following: “,
6 except a cable operator may refuse to transmit any public
7 access program or portion of a public access program
8 which contains obscenity, indecency, or nudity”.

9 (b) CABLE CHANNELS FOR COMMERCIAL USE.—Sec-
10 tion 612(c)(2) (47 U.S.C. 532(c)(2)) is amended by strik-
11 ing “an operator” and inserting “a cable operator may
12 refuse to transmit any leased access program or portion
13 of a leased access program which contains obscenity, inde-
14 cency, or nudity”.

○